press, the right to lawfully assemble. The most important of these—the right to vote—has now been extended to all above the age of 18.

Those who prefer disruptive demonstrations to constructive debate and the enlightened vote are ignoring the greatest opportunity afforded them to bring about lawful change.

It is time for all of us to take a really hard look at America. We have never cradled a more permissive society than we do today. Parental, educational, and religious guidance and governmental enforcement have all permitted and encouraged the individual to do his own thing, even to the extent of participating in civil disorders, invasion of others' rights, and of selecting laws which he will or will not obey.

Our society leans over backward in an apparent effort not to influence and discipline our young people toward our ideals and hopes, lest we spoil their personalities. How alienated and unloved many of them must feel.

Law and order is everybody's business and should be everybody's active concern. The liberal press and some of the commentators ridicule those who speak of law and order as "ultra-conservative" and "far right."

Hogwash.

The history of mankind proves that when law and order no longer prevail, a nation drops to its knees with impotence, unable to govern itself any longer.

It is not enough to believe in law and order. Each of us must make the effort to speak out in a positive manner. By our silence we grant approval to the misguided few.

Let us remember the tremendous job our police officers are doing in handling unlawful and destructive demonstrators. I applaud the fact that the police are again being allowed more latitude to do their job and to meet force with reasonable force where necessary to preserve order.

Most Americans, I believe, are ready to stand up and demand that law and order be preserved. Their patience is wearing thin. It would behoove those who would participate in unlawful demonstrations to engage in some rethinking—and turn their attention toward voter registration and the ballot as a means of bringing about progressive change.

SENATE—*Friday, June 2, 1972*

The Senate met in executive session at 12 noon and was called to order by Hon. HARRY F. BYRD, JR., a Senator from the State of Virginia.

PRAYER

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

O God, who has taught us in Thy Word to lift up our eyes to the hills, and that our help comes from the Lord who made heaven and earth, we lift our wistful spirits to Thee.

We give Thee thanks for every new vision of a better world and nations forever at peace with one another. In this season of summits, keep ever before us the summit of Sinai and the commandments of divine law, and the summit of Calvary and the law of love and the everlasting truths of the Sermon on the Mount. May we fix our eyes upon Thy goodness and mercy and justice. Make and keep us a nation under God. With this holy vision enable us to work this day and every day.

We pray in His name, who is Prince of Peace. Amen.

DESIGNATION OF THE ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. ELLENDER).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., June 2, 1972.

To the Senate:

Being temporarily absent from the Senate on official duties, I appoint Hon. HARRY F. BYRD, JR., a Senator from the State of Virginia, to perform the duties of the Chair during my absence.

ALLEN J. ELLENDER,
President pro tempore.

Mr. HARRY F. BYRD, JR. thereupon took the chair as Acting President pro tempore.

The ACTING PRESIDENT pro tempore. Under the order of yesterday, the following business will be transacted as in legislative session.

THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Thursday, June 1, 1972, be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

COMMITTEE MEETINGS DURING SENATE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that all committees may be authorized to meet during the session of the Senate today.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Berry, one of its reading clerks, informed the Senate that, pursuant to the provisions of section 1, Public Law 86–42, the Speaker had appointed Mr. BROOMFIELD as a member of the Canada-United States Interparliamentary Group, to fill an existing vacancy thereon.

The message announced that the House had passed a bill (H.R. 13918) to provide for improved financing for the Corporation for Public Broadcasting, and for other purposes, in which it requested the concurrence of the Senate.

HOUSE BILL REFERRED

The bill (H.R. 13918) to provide for improved financing for the Corporation for Public Broadcasting, and for other purposes, was read twice by its title and referred to the Committee on Commerce.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the distinguished Senator from West Virginia (Mr. ROBERT C. BYRD) is now recognized for a period of not to exceed 15 minutes.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time be charged against my order.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered, and the clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

ORDER FOR RECOGNITION OF SENATOR PROXMIRE ON MONDAY NEXT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that, on Monday next, immediately following the recognition of the two leaders under the standing order, as in legislative session, the distinguished senior Senator from Wisconsin (Mr. PROXMIRE) be recognized for not to exceed 15 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the time remaining under the order recognizing the junior Senator from West Virginia, now speaking, be vacated.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

TRANSACTION OF ROUTINE MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of routine morning business for not to exceed 30 minutes, with statements therein limited to 3 minutes.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. HARRY F. BYRD, JR. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

CONTINUED HARASSMENT OF VIRGINIA CITIZENS BY HEW

Mr. HARRY F. BYRD, JR. Mr. President, a group of Virginia citizens is rebelling against the continued harassment of the Department of Health, Education, and Welfare.

On May 19, a class action suit was filed in the Federal district court in Norfolk against HEW. This suit seeks to enjoin the Department from further attempts to obtain the confidential personal records of a group of schoolchildren.

These children are students in the special education programs of the city of Portsmouth, Va. Portsmouth operates five such special schools: One for the emotionally disturbed, three for children who are classified as slow learners, and one for the physically handicapped.

The Department of Health, Education, and Welfare has alleged that these programs are racially discriminatory in that they contain too high a percentage of black children. This allegation was made by the head of HEW's Region III Office of Civil Rights, Dr. Eloise Severinson.

I have commented several times in the past on Dr. Severinson's deliberate campaign of harassment against Virginia's secondary school systems.

The city of Portsmouth offered HEW data on the racial composition of the schools and the testing procedures utilized, as long as the names of the children were not included. The city also offered to furnish a sample cross section of the records of children whose parents consented to the release of this sensitive information.

HEW refused each of these offers and remained adamant in its demand for the full files.

I corresponded with Secretary Richardson on this subject and received an unsatisfactory reply. He stated to me that HEW did not desire to utilize the confidential material in the records, but that his Department still required the submission of the material.

The citizens' suit against HEW is to test a citizen's right to privacy from the prying eyes of the Federal bureaucracy.

Within recent months public officials in the counties of Accomack, Albemarle, Nansemond, Charlotte, Campbell, Isle of Wight, and Amherst and in the cities of Norfolk, Chesapeake, Portsmouth, and Franklin have issued complaints of harassment by HEW.

Now the citizens themselves are becoming aroused—and are going to court against HEW.

Secretary Richardson would be well advised to get his Department under control, to knock heads together, and to demand that these harassments end.

THE REPORT OF THE PRESIDENT TO CONGRESS AND THE NATION

Mr. HRUSKA. Mr. President, last evening the joint session of Congress witnessed a report and a part of one of America's shining and finest hours—bringing a vista of an era long sought in our modern times.

It brings to attainable reach that centuries-old prayer of mankind that there be "peace on earth, good will toward all men."

It is a goal and an event in which all of us can share and from which all can vastly benefit.

In areas of immediate interest and of some concern, the President brought out and emphasized some points which were especially impressive and reassuring.

The first has to do with the 3-year preparation for the outcome of "concrete results," which flowed from the talks and agreements. These were not the result of caprice nor of premature desire to arrive at some agreement which would glitter on the surface but which would not have a solid foundation. The President truly stated that since early in his administration it was his objective that the prospect of concrete results, not atmospherics, would be his criterion for meeting at the highest level. The result was a "working summit" and a fruitful one.

A second feature was the President's assurance that present and planned U.S. strategic forces are without question sufficient for the maintenance of our vital interests. Already there has been talk of numbers of missiles, and of different types of weaponry. Already there have been those far too ready to express misgivings and doubt and suspicion without having had the benefit of a full explanation and a complete disclosure of all the reasoning that went behind the type of agreement with regard to strategic forces. The President declared that he has studied the strategic balance in great detail with his senior advisers for more than 3 years. This Senator is willing to extend every fair intendment to his competence, to his judgment, and to his determination that the only national defense posture which can ever be acceptable to the United States is one in which no nation will be stronger than the United States of America.

And a third feature which was particularly impressive and should be accorded great credit is his willingness and desire that Congress—the elected representatives of the people—share in this effort to bring about a world in which all nations can enjoy peace. And so he declared his intention to submit for the concurrence of both House and Senate the agreement limiting offensive weapons and other subjects raised by the agreements; and, of course, by force of the Constitution, the Senate will be called to advise and consent to ratification of the ABM treaty.

It is noteworthy that the President does not report these events of the past 2 weeks as bringing instant peace, but only for what it truly is: The beginning of a process that can lead to a lasting peace.

Nor does the President lose his sense of reality, gained from years of experience and study. Witness his words:

> We must remember that Soviet ideology still proclaims hostility to some of America's most basic values. The Soviet leaders remain committed to that ideology.

Hence, his urging that the United States maintain our defenses and our economic strength as well at adequate levels. Likewise, the comfort of his declaration:

> No power on earth is stronger than the United States of America today, and none will be stronger than the United States of America in the future. This is the only national defense posture which can ever be acceptable to the United States, and this is the posture I ask the Senate to protect by approving the Arms Limitation Treaty to which I have referred. And with the responsible cooperation of the Congress, I will take all necessary steps to maintain in our future defense programs.

Mr. President, it would be well that we ponder on why it was possible to have reached this high and promising point in our world history.

Certainly, there must be foundations previously built to attain this result. And there were.

The preparation of the past 3 years to which the Chief Executive referred in his remarks is a large factor, without doubt. But the President truly and appreciatively credits Congress with another indispensable and extensive element. He does so with these words:

> Our successes in the strategic arms talks, and in the Berlin negotiations, which opened the road to Moscow, came about because over the past three years we have consistently refused proposals for unilaterally abandoning the ABM, unilaterally pulling back our forces from Europe, and drastically cutting the defense budget. The Congress deserves the appreciation of the American people for having the courage to vote such proposals down and to maintain the strength America needs to protect its interests.

Mr. President, there may soon be additional occasions for Congress to act on some of these propositions. It is indicated that votes may be called for at an early date on unilaterally pulling back our forces from Europe; drastically cutting our defense budget; and perhaps unilateral abandonment of the ABM.

It is my earnest hope that any who contemplate offering such proposals will carefully read and study the President's address of last night. It is my hope that they thoughtfully and studiously consider the large and historic sweep of the world events of the past 2 weeks. It is my further earnest hope that the judgment and the firm hand of past congressional positions once again prevail in these regards.

This is one of the ways in which Members of this body can share in the event. It is one of the ways we can show in our "actions what we know in our hearts—that we believe in America."

And that we recognize and follow a national leadership that stands preeminent in the annals of our Nation.

THE PRESIDENT'S REPORT TO CONGRESS AND THE NATION ON THE MOSCOW SUMMIT

Mr. STEVENSON. Mr. President, last night the President reported to the Congress and the Nation that the Moscow summit culminated in agreements which usher in a new era of restraint and stability.

I believe that the ABM treaty and the offensive missile agreement do indeed put us at the threshold of a new era, and for that the President deserves our gratitude. Whether we cross that threshold, however, depends on choices yet to be made by the President and by the Congress.

For over two decades the Soviet Union and the United States have in the name of national security engaged in a frenzied contest to produce nuclear weapons. Hundreds of billions of dollars have been spent; some of the best minds in the world have been diverted from more constructive pursuits; yet the United States and the U.S.S.R. entered the seventies no more secure than when the nuclear arms race began.

The SALT agreements offer a clear choice: Will we take serious measures to reverse the deadly nuclear spiral, or will we redirect the arms race into new, more costly, and perhaps more dangerous, channels?

If we are to cross the threshold to which the arms limitation agreements have brought us, there is no first step more crucial than a full reexamination of the Pentagon's 1973 budget request for strategic weapons. That budget request was prepared long before there was any certainty that the SALT talks would culminate in an agreement. Six months ago Secretary Laird said:

> We are hopeful for success in the Strategic Arms Limitation Talks now underway in Vienna, but no Secretary of Defense can base his plans and recommendations for adequate national security programs simply on the hopes for success in negotiations.

In February of this year Dr. John Foster, Director of Defense and Engineering, Department of Defense, was even more explicit when he told the Senate Armed Services Committee that the fiscal year 1973 strategic programs were designed in part to "hedge against the unfortunate event that no—SALT—agreement is reached."

But a SALT agreement has been reached—an agreement which demolishes a number of the central arguments underlying the Pentagon's strategic programs.

We were told that a sevenfold increase in the ULMS program was needed, because the Soviets were expanding their missile submarine fleet. Under the new executive agreement, that fleet will be frozen.

We were told that we had to continue the deployment of MIRV's because the Soviets were expanding their force of giant SS–9 missiles. Under the new executive agreement, that force will be frozen.

Long before the SALT agreements were arrived at, the administration requested $8.8 billion for strategic programs in the coming year—a 15-percent increase over this year's level. If we are in a new era, Mr. Nixon says, if the SALT agreements are to curb the arms race, the administration's request cannot stand. If we are embarked on a venture aimed at "reducing the causes of fear," we cannot increase spending on the very weapons which create that fear.

The President lost no time in appearing before the Congress to review the agreements reached at the summit. I hope he will lose no time to present the Congress with revised and scaled down budget requests for strategic programs.

DR. JEROME H. HOLLAND CHOSEN TO BE FIRST BLACK DIRECTOR OF NEW YORK STOCK EXCHANGE

Mr. HARRY F. BYRD, JR. Mr. President, Dr. Jerome H. Holland, U.S. Ambassador to Sweden, and former president of the Hampton Institute in Virginia, has been chosen to become the first black director of the New York Stock Exchange in its 180-year history.

The New York Times reports that Dr. Holland accepted the nomination, which is subject to approval of the exchange membership, and will shortly announce his decision to leave his current diplomatic position.

He will become a representative on the Board of Directors that is being completely restructured to reflect a greater public orientation. The current 33-man governing board will be replaced by a 21-man Board of Directors with 10 public representatives in midsummer.

Dr. Holland is widely and favorably known in Virginia. He became the president of Hampton Institute, a black college, in 1960, and served until his appointment as Ambassador to Sweden. Prior to coming to Virginia he was from 1953 to 1960 president of Delaware College, Dover, Del.

I congratulate Dr. Holland and I congratulate the New York Stock Exchange. Dr. Holland is a man of many talents, of great ability, and he has shown he can handle himself well in many difficult positions.

Again, I commend Dr. Holland and the New York Stock Exchange on this appointment.

LEAVE OF ABSENCE

Mr. MANSFIELD. Mr. President, in accordance with rule V, clause I, of the Standing Rules of the Senate, I ask unanimous consent that the distinguished Senator from Rhode Island (Mr. PELL) be excused from attendance in the Senate while attending on official business the United Nations Conference on the Human Environment pursuant to his appointment by the Vice President as an adviser to the U.S. delegation to the conference.

The PRESIDING OFFICER. Without objection, it is so ordered.

QUORUM CALL

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

ORDER FOR RECOGNITION OF SENATOR ROBERT C. BYRD ON MONDAY, JUNE 5, 1972

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on Monday next, following the recognition of the two leaders, as in legislative session, the junior Senator from West Virginia (Mr. ROBERT C. BYRD) be recognized for not to exceed 15 minutes prior to the recognition, for 15 minutes, of the distinguished senior Senator from Wisconsin (Mr. PROXMIRE).

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

THE PRESIDENT'S REPORT TO THE AMERICAN PEOPLE ON THE MOSCOW SUMMIT

Mr. ROBERT C. BYRD. Mr. President, the President's report to the American people last night indicates that there is justifiable cause to be optimistic about our future relations with the Soviet Union and the prospects for peace throughtut the world.

None of the agreements that were entered into during the summit was entered into blindly and, in my judgment, none will endanger the military or economic security of the United States.

No country in the world today is stronger than the United States, and I would not knowingly support any agreement of any nature whatsoever that would adversely change or endanger the position of our country in regard to the balance of power.

I expect to support the ABM Treaty which President Nixon will soon present to the Senate for ratification. I also expect to support the agreement with respect to offensive missiles which will be presented to Congress.

In my opinion the treaty and the agreement offer both of these superpowers a chance to put the lid on an arms race and to avoid possible crises involving the kind of brinkmanship that has marked some of our relations in the past.

The trip to Moscow—coming as it did following the trip to the People's Republic of China—will not produce instant peace throughout the world; it will not produce instant and perpetual relaxation of tensions; it does not bring about an immediate solution to any or all of the complex problems that confront this great Nation of ours in its dealings with the Soviet Union and the People's Republic of China; nor does the summit entitle us to let down our guard. But it is a step in the right direction, in my opinion. It is a recognition of the necessities that brought us together.

It is not an indication that the Soviets

have compromised the ideology which they have so strongly held during the past several decades, nor is it an indication that we have compromised our support for the principles which we often refer to as constituting the American system or the American way. But it does indicate that both countries were willing to sit down and reason together and, without any surrender of principles on the part of either nation, try to hammer out some modus operandi whereby there will not be the dangerous confrontations, hopefully, in the future that could bring these two superpowers to the brink of nuclear war.

So I compliment the President for trying to deal with the problems of change that have ushered in this new era in which we live. I will have more to say, of course, on the treaty and the agreement at a later time, but suffice it to say now that I am encouraged to believe that future steps can and ought to be taken. This is the opening step, this is the opening of the door, and I feel that if both of these superpowers, together with the potentially great superpower, the People's Republic of China, will conscientiously and earnestly work toward a solution of the problems that mutually confront these great nations, and if they are willing to try to keep their word and work diligently in this direction, their efforts in the long run will benefit not only the peoples of these respective nations, but also all mankind.

Mr. FANNIN. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. I yield if I have time.

The ACTING PRESIDENT pro tempore. The Senator from Arizona may proceed.

Mr. FANNIN. I wish to commend the distinguished Senator from West Virginia for his logical outline of what has transpired. We all realize that this is a step forward—I feel a great step forward—in bringing peace to the world. It will not come overnight. I agree with the distinguished Senator that we must not assume that all problems have been solved, but it is important for us to recognize that there is a desire now that has been expressed by both of the great powers of the world for mutuality and understanding.

Several agreements were negotiated during the summit conference that I think are very important to this country and to all the world, but I agree that we must not let down our guard. I think that is the understanding that was expressed by the President and the understanding of the Soviet Union. The people of that country, I think, hope for peace, just as the people of this Nation have great hope for peace.

I am very proud to commend the Senator for his remarks on this subject.

Mr. ROBERT C. BYRD. I thank the Senator.

Mr. President, if I may be recognized again for 3 minutes in my own right——

The ACTING PRESIDENT pro tempore. The Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, I was one of those Senators who some years ago voted in the minority against the nuclear test ban treaty, and possibly, if we were still living in that era, I would oppose the treaty which will shortly be proposed by the President; but we do live in a different era. I do think we have to look at this treaty and the agreement from the standpoint of what would be the alternative, if the arms race were to continue to accelerate, as the President has indicated. There must be a stop to the spiraling arms race, a race which neither side can win and which both sides would lose.

I think that we do have to choose between the alternatives of continuing to spend and spend and spend in an arms race, with no present plans by our own country for any new generation of missiles on the drawing boards, while the Russians are geared up now to proceed with an arms race. The Russians could, for example, build perhaps eight or nine submarines in a year, while we have nothing new presently coming along, and we would perhaps build only one. To engage further in an arms race at this point with the Russians concerning missiles and submarines, I think we would have to have a crash program. We have to consider what such a crash program would do to our economic problems. Of course, the Russians would also be stimulated to put forth even greater effort.

So it seems to me that we stand to gain a great deal from these agreements and that we ought to attempt to open the door further. I think there are adequate protections that are built into the agreements. As I said before, the agreements do not entitle us to let down our guard, but I do think they entitle us to be hopeful as we realistically and pragmatically assess the future.

I again compliment the President. I think he is due much credit for his efforts, and I trust that the Congress will, of course, study very carefully these agreements and will go into them at length and conduct appropriate hearings thereon, but that, in the final analysis, the Congress will contribute its part by approving the treaty and the agreement.

The ACTING PRESIDENT pro tempore. All time for morning business has expired.

ENROLLED BILL SIGNED

The ACTING PRESIDENT pro tempore (Mr. HARRY F. BYRD, JR.) today, June 2, 1972, signed the following enrolled bill which had previously been signed by the Speaker of the Hounse of Representatives:

H.R. 13150. An Act to provide that the Federal Government shall assume the risks of its fidelity losses, and for other purposes.

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

The ACTING PRESIDENT pro tempore (Mr. HARRY F. BYRD, JR.) laid before the Senate the following letters, which were referred as indicated:

AUDIT REPORT FOR THE AMERICAN SYMPHONY ORCHESTRA LEAGUE, INC.

A letter from George H. Jones, Jr., Certified Public Accountant, McLean, Va., transmitting, pursuant to law, an audit report for the American Symphony Orchestra League, Inc., for the fiscal year ended March 31, 1972 (with an accompanying report); to the Committee on the Judiciary.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. HARRY F. BYRD, JR., from the Committee on Armed Services, with amendments:

H.R. 2. An act to establish a Uniformed Services University of the Health Sciences and to provide scholarships to selected persons for education in medicine, dentistry, and other health professions, and for other purposes (Rept. No. 92–827).

By Mr. MONDALE, from the Committee on Labor and Public Welfare, with an amendment:

S.J. Res. 206. A joint resolution relating to sudden infant death syndrome (Rept. No. 92–830).

By Mr. MAGNUSON, from the Committee on Commerce, with amendments:

H.R. 1074. An act to amend section 220(b) of the Interstate Commerce Act to permit motor carriers to file annual reports on the basis of a thirteen-period accounting year (Rept. No. 92–828);

H.R. 5065. An act to amend the Natural Gas Pipeline Safety Act of 1968 (Rept. No. 92–829).

H.R. 5066. An act to authorize appropriations for fiscal year 1973 to carry out the Flammable Fabrics Act (Rept. No. 92–831); and

H.R. 13034. An act to authorize appropriations to carry out the Fire Research and Safety Act of 1968 and the Standard Reference Data Act, and to amend the Act of March 3, 1901 (31 Stat. 1449), to make improvements in fiscal and administrative practices for more effective conduct of certain functions of the National Bureau of Standards (Rept. No. 92–832).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first time and, by unanimous consent, the second time, and referred as indicated:

By Mr. MOSS (for himself, Mr. ALLEN, Mr. BELLMON, Mr. COOK, Mr. HUMPHREY, Mr. MONDALE, Mr. PASTORE, Mr. STEVENSON, Mr. TAFT, and Mr. WILLIAMS):

S. 3664. A bill to amend the Public Health Service Act to enlarge the authority of the National Institute for Neurological Diseases and Stroke in order to advance a national attack on multiple sclerosis, epilepsy, muscular distrophy, and other diseases. Referred to the Committee on Labor and Public Welfare.

By Mr. MAGNUSON (by request):

S. 3665. A bill to amend section 1106(a) of the Federal Aviation Act of 1958, as amended, to authorize the investment of the war risk insurance fund in securities of, or guaranteed by, the United States. Referred to the Committee on Commerce.

By Mr. MONDALE:

S. 3666. A bill for the relief of Mrs. Sin Wal Maing. Referred to the Committee on the Judiciary.

By Mr. TOWER:

S.J. Res. 238. A joint resolution to authorize and request the President of the United

States to issue a proclamation designating July 20, 1972, as "National Moon Walk Day." Referred to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. MOSS (for himself, Mr. ALLEN, Mr. BELLMON, Mr. COOK, Mr. HUMPHREY, Mr. MONDALE, Mr. PASTORE, Mr. STEVENSON, Mr. TAFT, and Mr. WILLIAMS):

S. 3664. A bill to amend the Public Health Service Act to enlarge the authority of the National Institute for Neurological Diseases and Stroke in order to advance a national attack on multiple sclerosis, epilepsy, muscular dystrophy, and other diseases. Referred to the Committee on Labor and Public Welfare.

NATIONAL MULTIPLE SCLEROSIS AND EPILEPSY ACT OF 1972

Mr. MOSS. Mr. President, I am today introducing, for myself and Mr. ALLEN, Mr. BELLMON, Mr. COOK, Mr. HUMPHREY, Mr. MONDALE, Mr. PASTORE, Mr. STEVENSON, Mr. TAFT, and Mr. WILLIAMS, a bill to amend the Public Health Service Act to enlarge the authority of the National Institute for Neurological Diseases and Stroke so we may advance a nationwide attack on multiple sclerosis, epilepsy, muscular dystrophy, and other neurological diseases. The short title of this bill: The National Multiple Sclerosis and Epilepsy Act of 1972.

It is estimated that more than 20 million American suffer from chronic neurological or disabling sensory disorders. Impairments range from speech defects and hearing problems to disorders of the nervous system causing crippling and death.

These conditions include multiple sclerosis, cerebral palsey, epilepsy, stroke, muscular dystrophy, Parkinson's disease, spinal injury, mental retardation, hearing impairment, hearing disorders, and many others.

As chairman of the Subcommittee on Long-term Care of the Senate Special Committee on Aging I have found that it is not uncommon for individuals affected by these conditions to have multiple handicaps. What is more, I am told that people affected by these chronic, long-term care conditions are confined more to bed, chair, and house, and need more assistance in daily living than victims of most all other diseases combined.

Unfortunately, there are no known cures for the vast majority of these problems. This means that millions of individuals continue to suffer grave disabilities, that millions of families must struggle to provide them with the assistance they need. Since there is a distinct absence of Government programs to help families support these individuals in their own homes, great numbers turn to nursing homes for assistance. Most families cannot afford the cost of nursing homes.

These disabilities take their toll not only from the individual and his family but deplete the wealth of the Nation as well. They produce long-term disability often lasting from childhood throughout life. The estimated cost of care for these neurological and sensory disorders is about $10.5 billion yearly. Multiple sclerosis alone accounts for $2 billion economic loss.

It is clear, therefore, that it is very much in the interest of the people of the United States to conduct an all-out attack against these disorders. This is the purpose of my bill.

In terms of measuring our present effort, I acknowledge the great strides made by the National Multiple Sclerosis Society which has since 1947 awarded more than $16 million in grants for research and postdoctoral fellowships to develop cures for these conditions.

We are still a long way, however, from finding a cure for multiple sclerosis, or MS, which is a disease characterized by the progressive deterioration of the central nervous system, although our knowledge is increasing by leaps and bounds. Most investigators presently believe that MS is probably the result of an infection contracted at an early age, which does not usually appear as an overt disease until sometime between the ages of 20 and 40. MS is known as the great crippler of young adults striking them down in their prime; there are almost no cases of the onset of MS after age 50.

Fortunately, there is an excellent program of research underway at the National Institutes of Health specifically within the National Institute of Neurological Diseases and Stroke—NINDS. However, NINDS is just one of the 10 institutes at the National Institutes of Health and has received the least favored treatment in terms of publicity or appropriations. This is particularly true now that the Congress has authorized major attacks on cancer and heart disease. Last year NINDS received only $116 million as compared, for example, with $612 million appropriated for the National Institute of Mental Health.

My bill would provide a $100 million increase in the authorizations for the next fiscal year for NINDS followed by a $125 million increase and a $150 million increase for the second and third year respectively. The bill would also authorized six new centers for clinical research into, training in and demonstration of, advanced diagnostic and treatment methods for multiple sclerosis and 14 new clinical research and treatment centers for other neurological and sensory disorders which I have mentioned previously.

With the introduction of this bill today, I hope to give some visibility to the NINDS and to focus public attention on the needs to overcome this series of chronic and crippling diseases. I do not intend to suggest, however, that other diseases or disorders are unimportant nor do I suggest that the other institutes at the National Institutes of Health should be neglected. On the contrary, I believe that they too should receive special attention from the Congress and increased funding. Particularly is this true for the National Institute for Arthritis and Metabolic Diseases which is almost as underfunded as the National Institute of Neurological Disease and Stroke.

As I noted earlier, arthritis and neurolobical disorders are quite commonly found in nursing homes and perhaps this accounts for my interest in this bill.

I add in closing that I have introduced legislation earlier this session that would expand the scope of medicare to provide supportive services for disabled individuals in their own homes. This would be greatly beneficial to families who struggle to help take care of their loved ones who fall victims to these diseases.

The bill I introduce today would help us find the techniques to care for victims of multiple sclerosis, epilepsy, muscular dystrophy, and other neurological diseases, wherever they are.

By Mr. MAGNUSON (by request):

S. 3665. A bill to amend section 1306(a) of the Federal Aviation Act of 1958, as amended, to authorize the investment of war risk insurance fund in securities of, or guaranteed by, the United States. Referred to the Committee on Commerce.

Mr. MAGNUSON. Mr. President, by request I introduce a bill to amend the Federal Aviation Act of 1958, and I ask unanimous consent that a communication from the Secretary of Transportation in connection with this bill be printed at this point in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

THE SECRETARY OF TRANSPORTATION,
Washington, D.C., May 16, 1972.

Hon. SPIRO T. AGNEW,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: Enclosed for introduction and referral to the appropriate Committee is a draft bill "To amend section 1306(a) of the Federal Aviation Act of 1958, as amended, to authorize the investment of the war risk insurance fund in securities of, or guaranteed by, the United States."

The purpose of this proposed legislation is to amend the War Risk Insurance Provisions of the Federal Aviation Act of 1958 to permit, at the request of the Secretary of Transportation, portions of the aviation war risk revolving fund to be invested by the Secretary of the Treasury in securities of the United States or in securities that are guaranteed as to principal and interest by the United States. The bill additionally provides that the interest and benefits accruing from these securities shall be deposited to the credit of that fund.

The present aviation war risk insurance program, as provided for in title XIII of the Federal Aviation Act (49 U.S.C. § 1531–1542), provides for war risk insurance policies to be issued by the Secretary under certain conditions (49 U.S.C. § 1532) and for the premiums received in consideration for such policies to be deposited in a revolving fund in the Treasury (49 U.S.C. § 1536(a)). There is no express authority under the existing title to invest the premiums for the benefit of the fund. The Department of the Treasury has advised us that the investment of treasury revolving funds is a common practice but that express statutory authority is a prerequisite to such investment.

Examples of such authority are found in 38 U.S.C. § 5228 which confers authority to invest and reinvest money in the General Post Fund of the Veterans Administration; 10 U.S.C. § 2601(d) which confers investment authority in relation to the National Credit Union Share Insurance Fund of the National Credit Union Administration; and 46 U.S.C. § 1288(a) which confers investment author-

ity in relation to the maritime war risk insurance program. That section pertaining to maritime war risk insurance provides as follows:

"§ 1288. Insurance fund; investments; appropriations.

(a) The Secretary shall create an insurance fund in the Treasury to enable him to carry out the provisions of this title and all moneys received from premiums, salvage, or other recoveries and all receipts in connection with this title shall be deposited in the Treasury to the credit of such fund. Payments of return premiums, losses, settlements, judgments, and all liabilities incurred by the United States under this title shall be made from such fund through the Division of Disbursement, Treasury Department. Upon the request of the Secretary of Commerce, the Secretary of the Treasury may invest or reinvest all or any part of the fund in securities of the United States or in securities guaranteed as to principal and interest by the United States. The interest and benefits accruing from such securities shall be deposited to the credit of the fund."

The language in our proposed bill closely follows that of the maritime war risk program, as the Treasury Department has indicated to us that this language is acceptable, and since the aviation war risk insurance program has closely followed the maritime war risk insurance provisions. As the Senate Committee on Interstate and Foreign Commerce explained in reporting on the aviation bill in 1951:

"This bill follows very closely the marine war risk insurance legislation enacted on September 7, 1950. It varies first only in the extent necessary to make it applicable to aircraft and secondly, it is more restrictive than the marine legislation in that it limits the insurance to war-risk insurance. Furthermore, the bill authorizes suits under it in the district courts rather than in the admiralty courts." (S. Rept. No. 128, 82d Cong., 1st Sess. (1951), p. 4)

In 1962, the maritime war risk insurance program was amended by Public Law 87-743, (76 Stat. 740), and codified at 46 U.S.C. § 1288(a), for the purpose of expressly authorizing investment of the funds reposing in the maritime war risk insurance fund. In reporting out that bill, the House Committee on Merchant Marine and Fisheries concluded that the 1962 maritime war risk insurance legislation was essentially identical to the then-existing aviation program except for the 1962 bill's grant of investment authority. (H. Rept. No. 2220, 87th Cong., 2nd Sess., (1962), reprinted at 1962 U.S. Code Cong. & Ad. News, 2782).

Today, in view of the rather sizable sum of money that is currently available in the aviation war risk revolving fund and the possible continued growth of the fund, we recommend enactment of this proposed legislation, which is similar to the 1962 amendment to the maritime act, to authorize the Secretary of the Treasury to invest and reinvest all or any part of the aviation war risk insurance revolving fund upon the request of the Secretary of Transportation.

As of December 31, 1971, the fund balance reflected total earned premiums of $8,158,837.54 and premium deposits of $1,629,468.58. The amount representing premium deposits fluctuates only slightly while the earned premium account continues to grow (presently at the rate of $400,000.00 per month). Included in the earned premium totals is an accounts receivable item of $4,881,854.77 representing a loan made by the Department to Pan American World Airways in connection with the hijacking and subsequent destruction of their Boeing 747 aircraft on September 6, 1970 in Cairo, Egypt. The cash balance remaining is approximately $5,000,000.00.

In summary, this Department feels that authority should be granted to invest these insurance premiums for the benefit of the aviation war risk insurance program. The Federal Maritime Administration has advised us that since 1962, they have earned in excess of $1.5 million in interest on the maritime war risk revolving fund which is considerably smaller than the Title XIII aviation fund. At the present premium level a conservative estimate of the annual investment income resulting from the enactment and implementation of this proposal would be approximately $200,000.00.

The Department has additionally considered the environmental and civil rights implications of this proposed action and believes that implementation of this proposal would have no significant impact in these areas.

The Office of Management and Budget advises that it has no objection to the submission of this proposed legislation to the Congress.

Sincerely,

JOHN A. VOLPE.

By Mr. TOWER:

S.J. Res. 238. A joint resolution to authorize and request the President of the United States to issue a proclamation designating July 20, 1972, as "National Moon Walk Day." Referred to the Committee on the Judiciary.

Mr. TOWER. Mr. President, I am pleased today to introduce a joint resolution requesting the President to designate July 20, 1972, as "National Moon Walk Day," in recognition of the many achievements of the national space program and in commemoration of the anniversary of the first moon walk on July 20, 1969.

In October of 1957, the United States was catapulted into the space program when the Soviet Union announced the launch of Sputnik I. This was the beginning of the space age, the dramatic and challenging quest by man to explore the universe beyond the planet Earth.

The principle of rocket flight, however, was not new. Rocket technology that would make space travel a reality, was directly derived from the accelerated military missile programs growing out of the cold war atmosphere of the early 1950's.

Until the launch of Sputnik I the highest priority and support in rocket flight was for operational intercontinental ballistic missiles with nuclear warheads. After Sputnik I, however, it was clear that the United States had to institute a sound, long-range space program on a reasonable and purposeful basis. It was obvious that space exploration had vital technical and scientific value with far-reaching significance for the future.

Our space program, as we know it, was created as a result of the National Aeronautics and Space Act of 1958. This act created a civilian agency called the National Aeronautics and Space Administration, NASA for short, charged with the responsibility for directing the efforts of the United States in space. NASA began functioning on October 1, 1958, 1 year after Sputnik I.

The Space Act also enumerated the basic objectives of this country in the conquest of space. The space program was to be conducted so that it would contribute to one or more of the following national goals:

First, expansion of human knowledge of phenomena in the atmosphere and space;

Second, improvement of aeronautical and space vehicles;

Third, development and operation of vehicles to carry equipment into space;

Fourth, establishment of long-range studies of benefits to be gained from the utilization of aeronautical and space activities for peaceful and scientific purposes;

Fifth, preservation of the role of the United States as a leader in aeronautical and space science and technology;

Sixth, transmission of information concerning defense to those agencies concerned with defense work and transmission of information on aeronautics and space sciences from those agencies concerned with defense to NASA;

Seventh, cooperation with other nations in fields related to peaceful uses of space; and

Eighth, close cooperation between all interested agencies to avoid unnecessary duplication of effort.

In its first 28 months of operation, NASA grew from 8,000 to 16,000 persons with the largest growth to come after 1960. In 1960 it was decided that the operations of NASA should be reviewed. It was at this point NASA was trying to move into manned flight. Project Mercury was well under way but little post-Mercury funding was present in the FY 1962 budget as presented to Congress by President Eisenhower in January of 1961. The reason for this was that the President felt that it would be necessary to establish valid scientific reasons for continuing manned spaceflight beyond Mercury.

In January 1961, John F. Kennedy took office as President of the United States. The new President appointed James E. Webb Administrator of NASA and in February he asked Webb and Secretary of Defense Robert McNamara to review the overall U.S. space program. In April Yuri Gagarin became the first man in space, and NASA spokesmen, testifying before the House Committee on Science and Astronautics after this event, were pressed to admit that NASA could accomplish a manned lunar landing before 1970 if funding was increased. Vice President Lyndon Johnson, as Chairman of the National Aeronautics and Space Council, was asked to investigate this possibility. This report, as well as the suborbital flight of Alan B. Shepard on May 5, 1961, brought to a climax the NASA recommendation for undertaking a lunar landing mission in that decade.

On May 25, 1961, President Kennedy, in an address before a joint session of Congress, announced a lunar landing mission before the end of the decade as the prime national space goal. The historic decision to push ahead with Project Apollo was subsequently endorsed by congressional action and public opinion. NASA began immediately to work toward that goal.

The success of the Apollo program and the commitment of the Nation to land men on the moon before the end of the decade can be measured by the fact that Americans walked on the moon for the first time on July 20, 1969.

Apollo 11 was the first of the Apollo flights to land men on the moon. Apollo 8 and Apollo 10 had orbited the moon earlier but no landing was involved. Crewmen aboard Apollo 11 were Neil A. Armstrong, spacecraft commander, Col. Edwin E. Aldrin, Jr., lunar module pilot, and Col. Michael Collins, command module pilot. It is interesting to note here that the United States has always emphasized that its space program was primarily a civilian effort, and that the man chosen to take the first step on the surface of another body in the universe was a civilian astronaut.

During their brief stay on the surface of the moon, Armstrong and Aldrin set up several experiments including a solar wind experiment, a seismometer, and a laser reflector. In addition they collected over 50 pounds of loose surface material and selected rocks.

Apollo 12 was launched on November 14, 1969; and, on November 19, 1969, the lunar module, Intrepid landed on the lunar surface. Capt. Charles Conrad, Jr., spacecraft commander, Capt. Richard F. Gordan, Jr., command module pilot, and Capt. Alan L. Bean, lunar module pilot were the crewmen.

Captain Conrad and Captain Bean were on the surface of the moon longer than the crew of Apollo 11, and deployed several experiments designed to increase our knowledge of the universe. Among these were a seismometer, surface magnetometer, and an ionosphere detector.

The rock samples brought back by Apollo 12 weighed approximately 75 pounds, and varied from fine-grained to coarse-grained. These rocks varied substantially from those brought back by Apollo 11, providing dramatic proof that the moon is a nonhomogenous body with a complex history.

Apollo 13 was launched on April 11, 1970, with crew members Capt. James A. Lovell, Jr., spacecraft commander, Fred W. Haise, Jr., lunar module pilot, and John L. Swigert, Jr., command module pilot aboard.

Trouble seemed to plague this particular flight from the beginning. Among other things, there was a last minute crew change when it was learned that Thomas K. Mattingly, the command module pilot, had been exposed to German measles. Backup command module pilot, John Swigert was called to active participation.

Apollo 13 had not even reached the moon when the No. 2 liquid oxygen tank in the service module exploded. This tank provided the oxygen needed by two fuel cells to generate electric power which operated the systems in the command and service modules. In the harrowing hours that followed, all of the resources at NASA's command worked overtime to bring those three men home safely. Although the aborted mission must be classed officially as a failure, in a much larger sense, because of the brilliant demonstration of the human capability under almost unbearable stress, it must also be classified as the most successful failure in the history of spaceflight.

Apollo 14, Apollo 15, and Apollo 16 have all followed the near perfect examples set by Apollo 11 and Apollo 12. All have landed on the moon, set up experiments, taken valuable pictures, and returned to earth with priceless lunar soil and rock samples.

Apollo 11 launched yet another era in technological achievement and challenge. Man is no longer tied to one planet in the solar system, and with this new age of discovery, comes the challenge of a New World before us. This New World is for all mankind with benefits for all the people of the earth.

I think it is fitting that we salute the future of man in space by declaring July 20, 1972, "National Moon Walk Day."

The achievements of the space program have not only stretched our horizons, they have contributed to a better life for all of us here on earth. Continued space research may hold the key to the provision of energy to meet our future needs as well as the answers to other important technological and environmental problems.

The placing of man's foot on the moon is symbolic of these more important and more tangible achievements. It was an act which captured the imagination and it deserves commemoration.

Mr. President, I ask unanimous consent that the text of my resolution be printed at this point in the RECORD.

There being no objection, the joint resolution was ordered to be printed in the RECORD, as follows:

S.J. RES. 238

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That in recognition of the many achievements of the national space program and in commemoration of the anniversary of the first moon walk on July 20, 1969, the President is authorized and requested to issue a proclamation designating July 20, 1972, as "National Moon Walk Day", and calling upon the people of the United States and interested groups and organizations to observe that day with appropriate ceremonies and activities.

ADDITIONAL COSPONSOR OF BILL

S. 3581

At the request of Mr. BOGGS, the Senator from New Jersey (Mr. WILLIAMS) was added as a cosponsor of S. 3581, a bill to amend the Federal-Aid Highway Act, and for other purposes.

ADDITIONAL COSPONSOR OF AN AMENDMENT

AMENDMENT NO. 999

At the request of Mr. CHURCH, the Senator from Georgia (Mr. GAMBRELL) was added as a cosponsor of amendment No. 999, intended to be proposed to the bill (H.R. 1) to amend the Social Security Act to increase benefits and improve eligibility and computation methods under the OASDI program, to make improvements in the medicare, medicaid, and maternal and child health programs with emphasis on improvements in their operating effectiveness, to replace the existing Federal-State public assistance programs with a Federal program of adult assistance and a Federal program of benefits to low-income families with children with incentives and requirements for employment and training to improve the capacity for employment of members of such families, and for other purposes.

ADDITIONAL STATEMENTS

THE WAR, GOLD, AND THE DOLLAR

Mr. SYMINGTON. Mr. President, again there is much comment about the recent heavy escalation by this administration of the war in Vietnam from the standpoint of the political and military implications; but little comment about what said escalation is doing and will do to our economy.

On May 9, gold sold on the London market at $54 an ounce.

On May 24, the price went above $58 an ounce.

Yesterday, the price of gold hit $60 an ounce, and closed at $59.45.

The press stated:

European bankers pointed out that the more gold prices exceed the official price of $38 an ounce, the weaker the dollar seems to look psychologically. That compounds the task of restoring confidence.

As we continue to face the serious and mounting demands for additional Federal funds for our pressing domestic needs, it would be interesting to obtain a reasonably accurate estimate of just how many tens of billions of dollars the United States has expended recently abroad, and what reward has come from those billions.

PRESIDENT NIXON'S REPORT ON THE MOSCOW SUMMIT

Mr. WEICKER. Mr. President, in the past 12 days President Nixon has created a new era of American foreign policy. Three years of quiet, intelligent bargaining under the President's personal leadership, have produced agreements on arms control, space exploration, environmental protection, and health and scientific exchanges which, coupled with past and future pacts on Berlin, European security, and expanded trade, mark the start of the end to the cold war.

The United States and Soviet Russia are the two most powerful nations on earth. Now, for the first time, they have agreed to unite this power for peace, for the future of the world's children rather than choosing to continue the tactic of fear which has surrounded every minor international dispute since World War II.

We will continue to have disagreements in the future. The need for a strong American defense has not evaporated in a cloud of euphoria. But reasonable men have met at the summit and found they can agree to scrap petty rivalries and begin to establish the apparatus for peaceful cooperation and the pursuit of world justice. This will be Richard Nixon's page in history. He has earned it.

PROBLEMS CONCERNING IMPLEMENTATION OF OCCUPATIONAL SAFETY AND HEALTH ACT

Mr. HANSEN. Mr. President, on numerous occasions in the past I have addressed the Senate on the subject of the Occupational Safety and Health Act.

There are numerous problems concerning the implementation of this act which have caused confusion, despair, and disgust among those to whom the law is applicable.

While there is still a tremendous lack of information, many associations have picked up the ball and are disseminating detailed information concerning the applicability of the Occupational Safety and Health Act to specific industries.

One fine example of the effort being made by the private sector of the economy is a booklet entitled, "Occupational Safety and Health Law, a Retailers Guide," published by the American Retail Federation.

This 38-page book provides information in a clear and easily understood form concerning the Occupational Safety and Health Act and its standards applicable to the retailing industry.

I congratulate the American Retail Federation for its effort to assist retailers throughout the Nation in understanding and complying with the Occupational Safety and Health Act.

Mr. President, I ask unanimous consent that the letter from Mr. Gene A. Keeney, president of the American Retail Federation, concerning the actions of the federation with regard to OSHA, be printed in the RECORD together with the introduction from the guide itself, which states the purpose and the subject matter contained in "The Occupational Safety and Health Law, a Retailer's Guide."

There being no objection, the items were ordered to be printed in the RECORD, as follows:

AMERICAN RETAIL FEDERATION,
Washington, D.C., May 19, 1972.

Hon. CLIFFORD P. HANSEN,
New Senate Office Building,
Washington, D.C.

DEAR SENATOR HANSEN: I would like to first thank you for your interest in the problems caused by the burdensome regulations promulgated under the Williams-Steiger Occupational Safety and Health Act.

There are indeed many problems caused by this Act. Retailing, although not one of the so-called "target industries" has already received its share of citations and/or penalties, which, in the great majority of cases were for very minor "offenses".

Retailing is trying to comply with these regulations, but many are very difficult, if not impossible to understand, and others are to say the least irrelevant.

To illustrate our good faith in trying to comply with this difficult law and the regulations, I am sending you a copy of a booklet, published by the American Retail Federation which attempts to help our members to understand this law. Further, the Federation is preparing a questionnaire for its members, asking them to tell us what problems they are having complying with the regulations.

To reiterate, thank you for your interest in this problem. Please contact us if there is any help that we can give you on this issue, especially as it pertains to retailing.

Cordially,

GENE.

INTRODUCTION

The purpose of this booklet is to review the Occupational Safety and Health Act (OSHA) of 1970 and its application to the retail industry.

This booklet will consist of three parts: a discussion of the Act and enforcement procedures; a review of the national consensus standards promulgated by the Department of Labor under the Act, insofar as they apply to the retail industry; and a review of the recordkeeping and reporting requirements under the Act.

Generally, the Occupational Safety and Health Act covers virtually all employers engaged in commerce, including the retail industry. The Act simply provides that it is the obligation of employers to furnish a safe place to work, free from recognized hazards causing or likely to cause death or serious physical harm and to follow specific health and safety standards adopted by the Department of Labor.

The Act was passed by Congress and signed by President Nixon in 1970; however the Act did not take effect until April 28, 1971. Since the Act went into effect, there have been numerous regulations promulgated by the Department of Labor. It will be the major purpose of this booklet to outline, not only the Act itself, but also to explain (in one handy reference guide) those regulations which affect retailing—especially as they apply to recordkeeping and reporting of occupational injuries and illnesses.

ADVANCES IN THE AMERICAN CARPET INDUSTRY

Mr. TALMADGE. Mr. President, I was recently privileged to attend an exposition featuring the advances which have been made in the American carpet industry. Because of these advances, the American consumer today gets a safer, longer lasting, better styled, and made carpet than in 1950 for the same or even less money than in 1950. In addition, the carpet industry has become one of the major economic factors in our economy, employing more than 1 percent of the American work force and accounting for more than $4.7 billion in sales annually.

This is a remarkable tribute to the carpet industry, its management, and its employees. Because of its particular significance, I ask unanimous consent to have printed in the RECORD, for the benefit of each Member of the Senate and the House, a speech by Mr. Walter Guinan entitled "American Profits From Carpet Industry," which summarizes the progress being made by this great industry.

There being no objection, the speech was ordered to be printed in the RECORD, as follows:

AMERICA PROFITS FROM CARPET INDUSTRY

(Speech by Mr. Walter Guinan)

The Carpet & Rug Institute, made up of 115 manufacturers located in 18 States and 330 suppliers located throughout the United States, represents over 90% of the carpet industry. We want to take this opportunity to welcome all Senators, Congressmen and distinguished guests to the industry's presentation "America Profits From the Carpet Industry." We thank you for attending and hope that you enjoy our presentation.

Carpet is beautiful and its colors, textures and designs beautify our surroundings. It enhances real estate and makes our living and working environments quieter. It provides a better way of life.

In 1950 our industry produced 72 million square yards of carpet. This year our industry is producing carpet at an annual rate of *850* million square yards—an increase in production of *ten* times the 1950 production rate.

In the past 20 years, carpet prices have defied the inflationary pressures of our economy. On the projected slide, we show a comparison starting in 1950 of the wholesale price index—the increase in the price of new automobiles—and the average price of carpet. In 1960, the average price of carpet declined while the wholesale price index increased 12 points and the average price of new domestic cars increased 35 points. These increases in wholesale prices and the price of new cars continued from 1960 to 1970. During this same period, the average price of carpets continued to decline so that in 1970, the *average price* of carpet and rugs was *below* that which existed in 1950. We know of no other industry that can match this record.

The carpet industry has made other substantial contributions to the economy. In 1950, the carpet industry was importing almost 100% of the face fiber materials used in its products and, today, virtually 100% of the face fibers used by the industry are purchased from United States producers.

In addition to eliminating the importation of face fibers the industry has increased the export sales of carpet and created a worldwide demand for American made machinery, fiber, snythetic backing and technology.

Carpet is one of the fastest growing consumer products in America—steadily increasing from 1950 retail sales of 1.3 billion to retail sales in excess of 4.7 billion in 1971.

The carpet industry and its related organizations currently employ over 2,000,000 people. The industry's phenomenal growth has been responsible for creating many new industries, such as syn. fiber—syn. backings—and expanding other industries such as trucking—distribution and retail. In addition, there are today thousands of small businessmen throughout the United States who are carpet retailers who were not in business in 1950. Much of this growth can be attributed to the tremendous research and development activities by our industry and its suppliers.

The industry has been responsible for some dramatic improvements in the function and service characteristics of its products during the past 20 years. Without increasing the price of its products, the carpet industry is today making a far superior product to that which we produced 20 years ago.

In this slide we have tested, on a wear tester approved by the National Bureau of Standards, two comparable samples—one made in 1950, the other made in 1972. The 1950 carpet would have provided the consumer with the equivalent of 3 to 5 years of home wear. The carpet made in 1972 will provide the consumer with 6 to 10 years of home wear. Both carpets retailed at $5.00 per square yard. In a similar test on carpet that retails for $11.00 per square yard, the 1950 carpet would have lasted the equivalent of 6 to 9 years of home wear while the 1972 carpet will provide the consumer with 10 to 15 years of home wear.

But increased wearability is only part of the carpet story. In 1950, the average consumer had to work 4 to 5 hours to earn enough to buy 1 square yard of carpet. With today's higher wages, and the decrease in carpet costs, a worker only has to work 1½ to 2 hours to earn the amount needed to buy today's longer wearing carpet.

One of the major breakthroughs in the carpet industry has been the development of new and better synthetic fibers. Carpet is both easier and less expensive to maintain. In this slide, we show a comparison of the service and maintenance characteristics of a 1972 carpet as compared to a similar carpet manufactured in 1950. This is just another example of how our products give the consumer more value for his dollar.

Carpet has made a substantial contribution in noise abatement which is a major intrusion upon our lives. Noise distracts, creates tension, impairs concentration and reduces productivity.

Because of its superior sound absorption qualities, carpet is being used in many areas

of construction to reduce floor-borne noise. Airborne noise is cut in half. Carpet reduces floor-above to floor-below sounds. It absorbs as much noise as an acoustical ceiling and reduces building costs.

The use of carpet for its sound absorption qualities has contributed to faster patient recovery in hospitals, improved student concentration in schools and greater efficiency and better environments in offices, homes, stores, churches and theaters.

Today's carpets provide a healthier environment by reducing allergies and the presence of beatles and silver fish.

Carpet is safe to live with and to walk on.

According to National Safety Council, the majority of home accidents are caused by falls. Carpet reduces the incidence of slips and slides in what might otherwise be high accident areas. It protects people in a hurry. And when falls do occur, carpet cushions the impact to reduce the risk of serious injury.

The U.S. Department of Housing and Urban Development took the safety feature of carpet into consideration in permitting its use in homes for the elderly.

Carpet has become so widely used that all of us take it for granted. We have come to expect that carpet will be used in public buildings, schools, colleges, offices, churches, stores, theaters, hotels, motels, hospitals and other public facilities.

I think you will see from this presentation that carpet provides a more pleasant and safer environment for all of us wherever we may be. The fantastic growth of the carpet industry from 70 million square yards in 1950 to over 750 Square yards in 1971 is one of the finest examples of what can be done in America under the free enterprise system.

WHAT IS THE CARPET INDUSTRY ASKING OF ITS GOVERNMENT

To provide an atmosphere to continue contributing to the growth and prosperity of all America.

Examine for a moment our free enterprise system that has helped to make our country great.

I have here a newspaper from New York—London—Paris—yes, power to create demand—merchandising keeps our Nation employed—and we are an important part of merchandising—take for example—*color*—in 1950, the consumer had a very narrow selection of color as compared with today's selection of an extensive expanse of color selection to meet the most discriminating choice of consumers.

Our industry is able to produce multicolored, patterned carpets at production rates that are 50 times greater than those which existed in 1950. In 1950 our industry was producing carpet at the rate of 17 square yards per minute. Today we have the capability of producing carpet at the rate of 25 square yards per minute.

By the nature of our product, our industry will resist having our carpets become a commodity item and hindering our potential growth. These are some of the basic foundations that sets the U.S. apart from the rest of the world.

We appreciate your interest in our industry and hope that the brief survey of what we have accomplished in the last 20 years will continue to be a valid example of what can be accomplished under the free enterprise system. America profits from the carpet industry.

Distribution of retail carpet sales by States, 1971

State	
Alabama	$45,648,000
Alaska	5,569,000
Arizona	42,126,000
Arkansas	17,469,000
California	438,348,000
Colorado	61,499,000
Connecticut	79,492,000
Delaware	15,708,000
Florida	$176,215,000
Georgia	124,712,000
Hawaii	24,752,000
Idaho	15,280,000
Illinois	372,345,000
Indiana	125,474,000
Iowa	83,157,000
Kansas	44,411,000
Kentucky	44,839,000
Louisiana	30,559,000
Maine	9,996,000
Maryland	97,342,000
Massachusetts	139,992,000
Michigan	235,572,000
Minnesota	127,330,000
Mississippi	18,850,000
Missouri	122,856,000
Montana	12,138,000
Nebraska	46,362,000
Nevada	9,282,000
New Hampshire	11,186,000
New Jersey	192,018,000
New Mexico	16,374,000
New York	492,898,000
North Carolina	93,820,000
North Dakota	14,328,000
Ohio	266,750,000
Oklahoma	35,369,000
Oregon	48,457,000
Pennsylvania	316,588,000
Rhode Island	16,850,000
South Carolina	43,887,000
South Dakota	13,042,000
Tennessee	75,779,000
Texas	191,352,000
Utah	44,173,000
Vermont	8,044,000
Virginia	70,734,000
Washington	84,585,000
West Virginia	37,223,000
Wisconsin	121,951,000
Wyoming	6,283,000
District of Columbia	35,986,000
Grand total	4,760,000,000

AMERICA PROFITS FROM U.S. CARPET INDUSTRY

State	Retail value of carpets and rugs produced	Manufacturing employment
Alabama	$57,200,000	600
Arkansas	109,400,000	1,200
California	347,400,000	3,500
Georgia	2,713,200,000	25,100
Kentucky	42,800,000	500
Massachusetts	42,800,000	800
Mississippi	66,600,000	740
Montana	24,000,000	275
New Jersey	33,400,000	400
North Carolina	261,800,000	2,900
Oklahoma	142,800,000	1,870
Pennsylvania	295,000,000	5,900
South Carolina	319,000,000	5,000
Tennessee	133,000,000	1,400
Texas	19,000,000	200
Virginia	133,000,000	1,400
Total United States	4,760,000,000	55,000

Source: The Carpet & Rug Institute, Inc., the Department of Commerce.

EXTENSION URGED FOR EMERGENCY UNEMPLOYMENT COMPENSATION ACT OF 1972

Mr. CASE. Mr. President, the Emergency Unemployment Compensation Act of 1972 is due to expire at the end of this month.

Thousands of jobless workers in 18 States and Puerto Rico face the bleak prospect of having no benefits available to them beyond the normal 26 weeks on unemployment compensation routinely available during the least difficult of times.

In view of the seriousness of this situation, I have sent a letter to the Secretary of Labor urging his support for the extension of this act. Joining me in signing this letter was every Republican Senator from the 18 States now in jeopardy of losing this entitlement: LOWELL P. WEICKER, JR. of Connecticut; JACOB K. JAVITS of New York; EDWARD W. BROOKE of Massachusetts; LEN B. JORDAN of Idaho; MARK O. HATFIELD of Oregon; ROBERT T. STAFFORD of Vermont; MARGARET CHASE SMITH of Maine; ROBERT W. PACKWOOD of Oregon; GEORGE D. AIKEN of Vermont; ROBERT P. GRIFFIN of Michigan; TED STEVENS of Alaska; MILTON R. YOUNG of North Dakota.

I ask unanimous consent that the letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

Hon. JAMES D. HODGSON,
Secretary of Labor, Department of Labor, Washington, D.C.

DEAR MR. SECRETARY: Within the next few days you will be submitting to the Congress your recommendations as to the extension of the Emergency Unemployment Compensation Act of 1972.

Unless this act is extended—and your recommendations will be of critical importance to its prospects in the Congress—thousands of unemployed workers in 18 states and Puerto Rico will face an early exhaustion of their benefits and have no other recourses but to seek relief from already hard-pressed state and local governments. As of May, these included: Alaska, California, Connecticut, Idaho, Michigan, Maine, Massachusetts, Minnesota, Montana, Nevada, New Jersey, New York, North Dakota, Oregon, Puerto Rico, Rhode Island, Vermont, Washington, and West Virginia.

In the less than three month period ending April 15, according to your department's statistics, 637,000 workers received average benefits of $54.69 per week which they would not have received had this emergency 13 week extension not been in effect.

While we expect that the national employment picture will continue to improve over the course of the next year, many states with higher-than-average rates of unemployment will take longer to catch up with the average improvement taking place nation-wide.

The unevenness of the unemployment picture underlines a fundamental fact we believe you should consider in arriving at your recommendations as to the extension of the Emergency Unemployment Compensation Act of 1972—that is, to the extent that the economic plight in these especially hard-hit states is not eased, overall national recovery will be hindered and slowed.

As you know, 18 states and Puerto Rico have over 6.5 percent unemployment which entitles them to benefits under the soon-to-expire 1972 act. Another six states (Alabama, Hawaii, Illinois, Maryland, Oklahoma and Pennsylvania) qualify for a 13 week extension under the terms of 1970 legislation.

If employment continues at a plateau, even though at relatively high levels, 1970 act entitlements could in addition be sharply reduced. Alaska, West Virginia, Oregon, Washington, Michigan, California and Rhode Island did in fact lose such entitlements since late last year.

The bleak outlook is that expiration of the Emergency Unemployment Compensation Act of 1972, combined with a leveling off of unemployment at relatively high rates, could leave thousands of workers in half of the states in the union with no benefits beyond the normal 26 weeks of unemployment compensation routinely available during the least difficult of times.

We urge you to give full weight to these special circumstances and solicit your support for the extension of the Emergency Unemployment Compensation Act of 1972.

THE QUALITY OF LIFE

Mr. FULBRIGHT. Mr. President, the Wall Street Journal on May 18 published an article entitled "Measuring the Quality of Life." This is a subject about which I have frequently spoken in the Senate, particularly in regard to the inadequacy of the gross national product as a true measure of the well-being of our society and the quality of life.

The Journal article, written by Richard D. James, reports on several efforts to develop an index which would give a better indication of the quality of life than does the GNP. The Journal quotes Sicco Mansholt, president of the European Common Market's executive commission:

I don't pay much attention to gross national product. In all our states this has been something sacred, but it's the devil. We must think instead in terms of the happiness of our people.

One approach mentioned in the Journal has been devised by William D. Nordhaus, a Yale University economist. He has developed an index he calls a measure of economic welfare or MEW. It excludes such things as defense spending, police and sanitation services, and road maintenance. These items, which are reflected in the GNP, do not really produce net improvement in the quality of life. He also includes some things that are not in the GNP, such as the value of time devoted to leisure, and makes allowance for various disamenities such as the costs of pollution, urbanization, congestion and crime. The result is that MEW rises considerably slower than GNP.

Of course this approach still relies heavily on measuring the economic or material aspects of life. Other suggestions have been made about measuring noneconomic factors, although the difficulties of doing this are obvious. The article refers to proposals by Margaret Mead and others for considering the noneconomic aspects.

Mr. President, as I have previously stated I feel that we must discontinue this heavy reliance on the GNP and give serious consideration to other means of measuring the national welfare. I ask unanimous consent that the article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

MEASURING THE QUALITY OF LIFE

(By Richard D. James)

A topic of continuing debate these days is whether the quality of life is improving or deteriorating. A vast range of issues now confronting us bears on the matter, from ecology to crime, from the youth culture to the Vietnam war.

The issue reaches business in the form of whether "more is better." Sicco Mansholt, president of the Common Market's executive commission, touched on it recently when he remarked: "I don't pay much attention to gross national product. In all our states this has been something sacred, but it's the devil. We must think instead in terms of the happiness of our people."

As with many complex issues, there's no yardstick to tell who's right. Are we better off? Certainly people are better educated. They have more leisure and better health. But we also have rising rates of crime and divorce and more people using drugs.

One wishes for some easy way to settle the matter, a clock, perhaps, that would count out human happiness, much as the clock at the Department of Commerce counts out our gross national product. Little wonder then that one finds more and more attempts to devise some measure, a gross national happiness index, an index of the quality of life.

THE ECONOMIST MAGAZINE'S INDEX

The Economist magazine of London took a stab at it not long ago. It compiled an index for 14 countries according to what it considered 15 important social indicators, including such things as car ownership, divorce, economic growth and the ratio of television sets and telephones to people.

If a high rate of divorce was considered to contribute to a better life, then the U.S. ranked first with an index of 457. Sweden ranked second with 336 and Canada third with 264. If divorce was counted as a negative factor, the U.S. dropped to fifth place with an index of 55. Canada was first at 338 and Sweden second at 226. A country's score in each category was its percentage above or below the average for all 14 countries. A country's overall index was compiled by totaling the percentage points in each category.

Business is attempting to develop an index. First National Bank of Minneapolis in its 1971 annual report outlined how it hoped to measure 10 components that taken together should give an indication of the measure quality of life in the Twin Cities. Among the categories are job opportunities, environment, housing, health and income.

The National Wildlife Federation, a conservation group, has an index, though it's aimed more at environmental quality. It includes such items as soil, air, water and living space. In 1971 the index declined to 55.5 from 57 in 1970.

Still another approach has been devised by William D. Nordhaus, a Yale University economist. He has modified the gross national product so as to come out with an index of household consumption, which he believes says more about the quality of life than GNP, which is a measure of total output of goods and services.

He calls his index a measure of economic welfare or MEW. It excludes such things as defense spending, police and sanitation services and road maintenance. These items, which are reflected in GNP, are simply overhead costs of running a complex industrial state, Mr. Nordhaus reasons, and they don't really produce any net improvement in the quality of life.

He also includes some things that aren't in the gross national product, such as the value of time devoted to leisure. Finally, he makes allowance for various disamenities such as the costs of pollution, urbanization, congestion and crime. The result is a MEW that rises considerably slower than GNP—54.8% between 1947 and 1965 (the latest year for which Mr. Nordhaus made calculations) as compared with a 99.4% increase in GNP in the same period.

All of these approaches rely heavily on measuring the economic or material aspects of life—consumption, cars, television sets, number of doctors. It can be argued that this is as far as one can or should go in devising a quality of life index, that it becomes impossibly difficult to go beyond material or quantitative measures. To do so would load the index with such a high degree of error as to destroy any usefulness.

Indeed, there are problems enough just with this limited approach. Take the seemingly simple exercise of how to value leisure time. One way is according to the market place. If a person earning $10 an hour has an hour of leisure, it is worth $10. But that leads to the odd conclusion that leisure time for the poor is less value than for the wealthy. Observation suggests that just the reverse might be true. Because the poor must work longer to earn a living wage, their leisure actually might be more valuable since they have less of it.

That raises another possibility. Perhaps one should take into account how people themselves value leisure. What is it worth to a person to get an additional hour of leisure? Studies of what commuters are willing to pay for transportation to get home from work faster show that they are willing to pay only 20% to 25% of their salary to save an hour. In other words, a person earning $10 an hour won't spend $10 for an additional hour of free time, but he would pay $2. Is an hour of leisure worth $2 or $10?

Mechanical problems such as this probably can be solved (in the case of leisure, perhaps just by arbitrarily assigning one value or the other), but there are more bothersome shortcomings with consumption as a quality of life indicator. In a society such as ours, which places great emphasis on material goods, no doubt consumption does have a strong correlation to quality of life. Some contend, however, that somewhere along the line consumption leading to greater craving, restlessness and unhappiness.

Others, like economist Kenneth E. Boulding, argue that consumption is a poor measure because it is essentially decay—television sets burning out, clothing wearing out. There also is the problem of distribution of goods and services within our society. Consumption is an absolute aggregate measure, but quality of life probably is relative—the Joneses keeping up with the Smiths. Thus, a rapid growth in overall consumption coupled with a relative lack of progress on the part of low-income families doesn't necessarily mean an overall improvement in quality of life.

SOME NONECONOMIC FACTORS

Finally, aren't there many noneconomic factors important to the quality of life? Uriel G. Foa, psychologist at Temple University, suggests that every human being has six basic needs: love, status, information, money, goods and services. Some are economic and some aren't. Measuring the ups and downs in the quality of life with an index limited to the economic factors assumes that the noneconomic factors remain unchanged. In fact, the two categories act back and forth on each other in some rather interesting ways.

For instance, a person's religious beliefs can directly affect his personal consumption. They will determine how much of his personal wealth he gives to others and how much he keeps for himself. At the same time, personal consumption will have a great deal to do with his religious beliefs. Whether a man is starving or not is likely to influence how religious he is.

Prof. Foa maintains that by ignoring the significance of noneconomic needs we tend to see improvement in the quality of life exclusively in terms of a better distribution of economic resources. If what the blacks in this country need is status or love, lavishing more goods and services on them isn't the whole answer to improving their quality of life, and this is where indexes limited largely to the economic side of things fall down.

Of course, there are obvious problems when it comes to measuring the noneconomic aspects. If someone gives $10 to another person, he is $10 poorer. If he gives love, he himself likely has more love. With the noneconomic factors two and two don't make four; they make five, six, or sometimes seven.

Perhaps a part solution is to think about quality of life in terms of patterns rather than in absolutes—a suggestion made by anthropologist Margaret Mead. One might look at a pattern of life—what is available with a given level of technology, a given

level of education, a given set of resources—and examine whether that pattern supplies people with a degree of dignity as human beings that is comparable to the degree of dignity of other people.

In this way one can compare a way of life that has, say, more material things and less leisure with one that has less material things and more leisure or with one where people have great opportunities to develop religious or esthetic values and much less material wealth.

Prof. Mead reports that in a New Guinea village where she once lived the people felt they had attained a quality of life comparable to the American style that they had seen in Life magazine because they believed that what was needed was a house that was divided into rooms and that had a separate kitchen. Having that put them on a par with Americans.

Thus, technological levels and levels of consumption become relatively less important. If one has the kind of house that keeps out the rain and gives dignity in regard to one's neighbors, one has the kind of house that is needed and that kind of house, which might be a thatched hut costing $500, can be compared with one in our society that costs $40,000.

THE PLUMBING PATTERN

Patterns are useful, too, in gauging how our own quality of life has changed over the years. For instance, anyone living today in a house without indoor plumbing would be considered deprived, but 50 years ago, not necessarily so.

It doesn't automatically follow that our quality of life has improved just because more American homes have indoor plumbing today than 50 years ago, or because more people have college educations. Beyond the very basic irreducible human needs, things that contribute to living first class are very much relative to time and place—including the notion of human happiness itself. In some societies people aren't necessarily supposed to be happy.

All of this suggests that quality of life is related, at least partly, to what people believe they ought to have and believe it's possible to have. One study of British factory workers showed that they were just as unhappy if they were paid more than if they were paid less than they thought they ought to be. If this is true, then any index should probably reflect people's expectations.

For the moment, devising a quality of life index that would include economic and noneconomic factors, encompass the essential patterns of life and reflect expectations of people is probably beyond social scientists' capabilities. An index tied largely to consumption is a useful beginning. Hopefully, however, before too much longer, social scientists will provide the tools for a more sophisticated measure.

IN SUPPORT OF A 20-PERCENT INCREASE IN SOCIAL SECURITY

Mr. TOWER. Mr. President, after careful study I have decided to become a cosponsor of the amendment to H.R. 1 that would provide an across the board 20-percent increase in social security benefits. As a longtime supporter of a strong and viable social security system, I believe that this benefit increase is the best way to provide immediate assistance to elderly Americans.

For many elderly Americans, social security benefits represent their sole source of income. These Americans living on a fixed income suffer from continued economic instability. While I am convinced that the economy is now in an upturn, I also feel that this social security increase is necessary to help improve the economic conditions of our elderly citizens who contributed little or nothing to the inflation that we have experienced in the last decade.

It is a much wiser policy to provide this assistance through a strong social security trust fund than by increasing appropriations for existing programs or starting new programs that may have only a limited effect on the well-being of the elderly. Immediate assistance is what is called for and this increase will furthermore have a positive effect on our economy.

Mr. President, I would not support this increase if I felt that it could only be financed at the expense of large increases by the Nation's wage earners who are now contributing to the social security trust fund. This increase can be financed by a modest increase in the payroll tax. By expanding the wage base, the Congress will be bringing stability to the payroll tax or contribution rate over the next 40 years. In fact, a large portion of the American work force will be contributing a smaller portion of their wages toward the social security system under the proposed financing scheme that I am now supporting than they would under the current financing system or the system in the House-passed welfare-social security bill.

I am hopeful that Congress will approve this benefit increase along with other needed additional reforms in our social security system. For instance, Congress should enact a bill that increases the earnings' ceiling that a social security beneficiary may earn before any reductions are made in his or her social security benefits. A ceiling of $3,000, which I introduced as S. 639, represents an equitable amount so that our elderly citizens will not be deterred from continuing to be part of our work force. Additionally, improvements in widow's and widower's benefits and the elimination of support requirements for divorced women which have acted detrimentally to many women who truly deserve benefits represent just an example of the variety of reforms that should be made this year in the social security program.

THE WELFARE MESS

Mr. HANSEN. Mr. President, in spite of what the Washington Post may think of welfare reform—Finance Committee style—as expressed in one of their editorials, there are others who believe the proposed guaranteed job opportunity program makes a lot more sense than a guaranteed welfare income.

Another change made by the committee could in the words of the chairman "do more than any other action to ease the welfare mess by discouraging child abandonment. In far too many instances," he said, "fathers today simply ignore their responsibilities to their own children, leaving the burden of caring for them to the taxpayers through the welfare system."

Mr. President, one of those who approves of the action the committee has taken in making it more difficult and uncomfortable for a father to avoid his responsibility to his own children is the Deputy District Attorney of the Nonsupport Division of the State of Colorado.

Ann Allott, who holds that position and, incidentally, is a daughter-in-law of the distinguished senior Senator from Colorado (Mr. ALLOTT), has written me expressing her approval of making Internal Revenue Service records available for a woman who is trying to locate a runaway father.

Mr. President, as one who is confronted with the welfare problems of the State of Colorado, Ann Allott is certainly in a position to speak from experience. I ask unanimous consent that her recent letter to me and newspaper clipping she enclosed with her letter be printed in the RECORD.

There being no objection, the items were ordered to be printed in the RECORD, as follows:

STATE OF COLORADO,
OFFICE OF THE DISTRICT ATTORNEY,
Denver, Colo., May 22, 1972.

Hon. CLIFFORD HANSEN,
Senate Office Building,
Washington, D.C.

DEAR SENATOR HANSEN: Enclosed is a copy of the newspaper article I have clipped from the Rocky Mountain News indicating that the Senate Finance Committee is asking the Senate's approval to make Internal Revenue Service records available for a woman who is trying to locate a "runaway" father. Secondly, you are asking permission to attach federal salaries in order to collect support money.

Please be assured that such aids would greatly help us in pursuing "runaway" fathers. Every nonsupporting father that we catch and get on a paying basis, either potentially or actually, reduces the amount of welfare money spent in this city. By making Internal Revenue Service records available to us, a "runaway pappy" should be a relic of the past.

Sincerely,

ANN ALLOTT,
Deputy District Attorney, Nonsupport Division

Enclosure.

"RUNAWAY" HUSBANDS TARGET OF SENATE GROUP

WASHINGTON.—The Senate Finance Committee Thursday voted to allow wives to use the government's tax collection machinery in their effort to track down "runaway" fathers who duck out on child support payments.

The committee also voted to waive existing restrictions that prevent such mothers from attaching the salaries of husbands employed by the federal government. An attachment is a court order making an automatic claim on a salary.

The two provisions were added to the welfare reform bill being fashioned by the committee, but they would apply to all mothers, not only those on welfare.

To locate fathers who disappear and refuse to make court-ordered child support payments, the committee decided to allow mothers to seek Internal Revenue Service (IRA) help in locating the vanished father.

Whenever taxes were withheld from his salary, the IRS would be obliged to tell the mother where he can be found.

NAVY AIRCRAFT CARRIERS

Mr. MOSS. Mr. President, the Navy is seeking almost $1 billion this year for a second nuclear aircraft carrier, the CVAN–70. With the budget deficit for fis-

cal year 1973 estimated at between $40 and $50 billion it is crucial that we examine all the alternatives to this purchase.

One obvious alternative is to upgrade our older existing carriers instead of scrapping them and building a much more expensive ship from scratch.

There is precedent for such a step. The carrier *Midway* was refurbished less than 2 years ago at a cost of $202 million. The complete overhaul extended the 25-year-old ship's life span to well into the 1990's.

Despite a 240-percent cost overrun—the original estimate was $84.3 million—we now have a completely modern aircraft carrier capable of handling the most sophisticated aircraft including the F–14—at about 20 percent of the proposed cost of the CVAN–70.

The overhaul was quite extensive: the deck area was increased from 2.9 acres to 4.02 acres, three new steam catapults were added along with the latest in electronic equipment. The new deck is now in the "angled deck" configuration which allows simultaneous launching and receiving of aircraft.

There were several reasons for the exorbitant cost overrun. One was a labor union strike on west coast shipyards. Another was the fire on board the *Oriskany* which delayed the use of a Navy shipyard by the *Midway*.

But there were other more controllable reasons. The Navy used aluminum instead of steel in the three new elevators. The whole ship was air conditioned. And as the ship was being reworked, the Navy added the very best and latest electronic systems such as the computerized naval tactical data system and the ships internal navigation system.

This leads me to the conclusion that even taking inflation into account, I believe the Navy can convert the *Midway's* sister ships, the *Coral Sea* and the *Franklin D. Roosevelt*, into modern carriers for about $500 million.

If we spent this sum to convert the two ships, we would then have one new carrier every 3 years to 1979 at half the cost of one nuclear carrier.

I offer a fine article on the Navy conversion of the *Midway*, written by Stephan Schwartz, an associate editor of the magazine, that appeared in Navy magazine in December 1970. The title is "At 25 *Midway* Begins a Second Career as Critics Decry Expense."

I ask unanimous consent that the article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

CONTROVERSIAL LADY: AT 25 "MIDWAY" BEGINS A SECOND CAREER AS CRITICS DECRY EXPENSE—CVA UNDERGOES 5-YEAR $202 MILLION-PLUS REBUILDING; NAVY SAYS SHE'S GOOD FOR 25 MORE—PROJECTED DETRACTORS DOUBTFUL

(By Stephan A. Schwartz)

With the words, "The United States Ship Midway is in commission, I have assumed command and report for duty in Carrier Division Seven," Capt. Eugene J. Carroll, Jr., on January 31, 1970, began his tour as captain of what for both him and the Navy, is a very special carrier.

Twenty years ago Captain Carroll made his first carrier landing—the ship was Midway. It must have been a pleasure to take command years later of the ship where much of his career began. For the Navy returning Midway to the active Fleet is the culmination of the longest and most expensive rebuilding any U.S. ship has undergone. It means, after nearly five years, putting to the test a project which has undergone heavy criticism, for the time and money spent, as well as for the whole idea of bringing a 25-year old ship into the 70's, 80's, and according to the Navy, even the 90's.

When she completes her shakedown cruise this month, she will go on duty, after a four year, $200 million plus yard period, with her original 2.9 acres of armor-plated flight deck increased to 4.02 acres and extended 50-feet longer, to 996 feet, giving pilots a 310-foot landing distance. She also has three new steam catapults, and has been fitted out with the latest electronic gear as well as increased habitability.

This ends the second chapter of a well argued controversy; a saga which began with the decision to modernize Midway, first of a three ship post-World War II class—the others are Coral Sea and Franklin D. Roosevelt. The original plan was to spend two years on the job at an estimated cost, in 1963, of $84.3 million. In that time, and for that price, the country would have gotten if not a bargain at least a very good deal.

In June, 1964, the Navy Ships Characteristics Board approved a revised program of modernization for the Midway, giving her the capabilities of a newly constructed ship. They reasoned that the hull and machinery could last many more years and with budget strictures it would be logical to modernize the ship to handle high-performance aircraft, rather than building an entirely new ship.

Critics rebut this by pointing out Midway had already undergone one modernization in 1957 costing $65.5 million, and that it would have been wiser to let her run out her active duty in the Fleet without further major work.

They were not, and are not, entirely silenced by the reality that Midway had reached a point where even with her 1957 conversion she was not able to function as a first line CVA since she could not operate the all-weather attack plane, the A–6, or the RA–5C reconnaissance plane—she could, however, work the F–4 fighter and after modernization will be able to handle the most modern operational planes as well as the next generation F–14s. At that time the official position was to maintain 15 CVAs, and that even with a cutback to 12 CVAs, either a Midway class carrier had to be brought up to the latest standards or a completely new ship built.

The post war U.S. CVAs include eight Forrestal and improved Forrestal class carriers, one Enterprise class and the three Midway class ships—a total of 12 modern carriers. Depending on what decision is made about the number needed in the future, two courses of action are possible. Either all the Midway class ships will stay on—although the FDR and Coral Sea really should be extensively modernized at some point to be effective ships—for a total of 14; or FDR and Coral Sea will be replaced, one at a time, by Nimitz in 1972, and Dwight D. Eisenhower in 1974.

This would again leave 12 CVAs. All, however, would have almost all of the most current capabilities.

Ships of the older Essex class can not be included in this first line CVA group since they cannot operate these basic aircraft and instead will have to rely on the A–7 attack plane, the R–F8 reconnaissance and F–8 fighters. The other Midway class carriers, modernized during the later 1950s can fly the newer planes because Coral Sea was modernized after Midway and FDR completed an extensive yard period in 1969. Both, however would have to be modernized, yet again, to handle the F–14 and other next generation aircraft.

PLANS ABANDONED

Probably because of cost over-runs on the Midway, plans to modernize the other two carriers in her class have been abandoned. The Navy is understandably sensitive about this whole thing, but feels that for what it paid it still got its money's worth—and that if it didn't, many of the reasons were beyond its control. Indeed a good case can be made for the latter point. Only Midway's actual performance record will ever settle the controversy on whether it was worthwhile to do the job—if, indeed, even that will.

Almost as soon as Midway arrived at the Hunter's Point Naval shipyard at San Francisco for modernization in 1966, her troubles began. The carrier Oriskany had just suffered a tragic fire. And although originally it had been planned to place Oriskany with a private ship builder for repairs, a West Coast strike had shut down all private yards and the Navy had no choice but to use its own facilities. The decision was made that getting Oriskany back on the Vietnam line took precedence to such a major job as Midway. On top of this an increasingly tight financial picture faced the Navy with another tough choice. There simply wasn't enough money immediately available to handle both Midway and Oriskany. The major renovation would have to wait; money, men and materials were funneled to the fire wrecked Essex class carrier.

REEVALUATION MADE

It was at that juncture, critics claim, that the whole Midway project should have been revaluated. They assert that work on the smaller Oriskany should not have taken precedence over a much larger ship, especially since the Navy claimed the final result of the latter would be a carrier as modern as any afloat. If it was deemed necessary to do Oriskany first then, they feel, the Midway project should have been reconsidered, in the light of rising costs. The Navy responds to these attacks by pointing out that the idea was to get a CVA back on the combat line as soon as possible, and the Oriskany was the best bet.

With the Southeast Asian conflict heating up, perhaps, in retrospect, this really was the only choice the Navy could have made.

Unquestionably some of the cost overruns were unavoidable—assuming the project was going to be completed. It was discovered, for instance, that the 200,000 plus horsepower geared turbines had undergone much greater wear over the years than had been anticipated. Since putting in a new propulsion system is almost equivalent to starting from scratch, there was no choice but to rebuild the worn components. The cost was greater than had been planned.

Since she seemed destined to work in Pacific waters (with Viet Nam ever more actively perking along at the time) it was necessary to fully air condition the ship: a $10 million item. Also, because of increasing concern on the part of top Naval officers with ski slope manpower retention figures, it was decided to make a real effort to bring the ship up to the current standards of crew space habitability. A forward center-line elevator was removed to add extra living space. After the conversion the ship had space for 4,427 officers and men—139 ship's officers, 2,474 enlisted crewmen; 223 air wing officers, and 1,591 air wing enlisted men. On the old Midway crewmen often had to sleep on desks or in workspaces, living out of seabags for the entire cruise. Eating facilities were improved and provision was made to split the necessary 14,000-plus daily meals between forward and aft mess sections. Quarters are still tight, however, in comparison to later carriers which operate with about the same crew but with considerably more space.

WHAT KIND OF SHIP?

The real test of the conversion is what kind of carrier is the Midway today. In size

her 51,000 tons standard or 64,000 tons full load and complement, make her the largest, immediate post-World War II ship and still of formidable size. She is not however, up to the later post war carriers. The first of these, the Forrestal, is 60,000 tons standard and 78,000 full; Enterprise, first of the nuclear carriers is 75,700 tons standard and 83,750 full; John F. Kennedy is 61,000 tons standard and 83,000 full.

Interestingly enough the conversion included efforts to actually lower her weight, using aluminum at many points such as the three large, now deckedge, four-point suspension elevators capable of lifting 100,000 pound loads—the weight of a fully loaded aircraft.

Although it is hardly justification for taking almost five years to do the job the time element actually worked in Midway's favor, as far as making her a better, longer lived, CVA. As a result of the Enterprise fire and, experience gained in the Viet Nam war, improved fire fighting equipment was developed and incorporated. Another factor designed to hold damage control to a minimum: Midway is so compartmentalized after this remodeling that she is regarded as practically unsinkable, a fact the Navy is so proud of that it is willing to say it publicly despite memories going all the way back to Titanic. In general then, although her hull and engines are the same, little else is.

FACTORS CRITICS OVERLOOK

Many advances came in electronics while the reworking was going on, and Midway got the best available. Her combat information center and command complex have been updated, with inclusion of the computerized Naval Tactical Data System (NTDS) and the Ships Inertial Navigation System (SINS). These will enable her to operate the highly sophisticated guidance systems used on current planes as well as those proposed for the future.

In addition she got expanded and more sophisticated shops to service the electronics gear and the plane themselves. Her avionics spaces can handle any plane that can land on the carrier now or in the future. They are so sophisticated that in theory they would be adequate even after the time she is scheduled to complete her projected lifespan.

These are factors often overlooked in an evaluation of a ship—especially by critics—but the ability to operate an aircraft is far different from merely getting it into the air and providing a place for it to return.

Midway was never a small ship but with this last conversion she has increased in size. Her overall length is now 996 feet (more than three football fields), with a flight deck breadth, at its widest point, of 258 feet. This increase includes lengthening her angled flight deck, a part of the 1957 conversion, by more than 25 feet. Her height, from keel to mast top, is equal to a 20-story building.

She also always was a fast ship, and with her turbine rebuilding can now make 30 plus knots (about 35 miles per hour). With this speed she is well able to perform as the core of a modern carrier task group. This is not as much of a problem as it might seem since the DD–963 destroyers, which will be operational in mid-decade, will not be as fast as some earlier classes. Although Midway does not have the almost unlimited range of a nuclear-powered ship, she does have a great range and, with underway replenishment, which even the nuke carriers must undergo if only for stores and ordnance at much less frequent intervals, she should be equal to all modern operational demands. It does seem that Midway has begun yet another career.

Launched March 20, 1945, in Newport News Shipbuilding and Drydock company, and commissioned Sept. 10, 1945 she was the first carrier to have an armored flight deck. Along with her sister ships she was the first ship outfitted for storage and assembly of nuclear weapons and equipped to launch the twin engine, land based, P2V–3C Neptune. because of hydraulic, instead of the current steam, catapults, JATO bottles were required to get these planes off the deck. This would have only been practical for a big nuclear strike.

Then as now controversy swirled around Midway for she was the ship used by Navy to prove a nuclear capability, in the face of a concerted Air Force drive to preempt this part of the Nation's defense. In September 1949, then Captain (now Vice Admiral, retired) John T. Hayward took off from the Midway's deck in a Neptune with a group including then Secretary of Defense Louis Johnson, Secretary of the Air Force Stuart Symington, and the Chairman of the Joint Chiefs, General of the Army Omar Bradley, USA. As Captain Hayward was taking them out to enter the plane he turned to Johnson, a most controversial Secretary of Defense, who had just ordered the Navy to stop building a flush deck carrier (the island structure was to telescope) named United States, and said, "If anything happens on this take-off, we will have a flush-deck carrier with your approval or not!"

A VERY FEW FEET

As Hayward took off with Johnson in the copilot's seat, his port wing tip missed the island by a very few feet.

The age of missiles also got a boost aboard the Midway, for it was from her decks that one of the first ship based missiles was launched when a V–2 was fired in September 1947.

Another first came when fully automatic carrier landings were made on the Midway on June 13, 1963 by an F–4 Phantom jet and an F–8 Crusader, whose pilots did not touch the controls.

In March of 1965 when the bombing of North and South Viet Nam was increasing in intensity, the Midway operated in the Tonkin Gulf with Task Force 77. During an eight and one-half month deployment, her air wing flew more than 11,900 combat sorties against military targets. And, in two almost classic "dogfights" her aircraft were credited with downing the first three North Vietnamese Migs.

A proud ship then, and one no stranger to controversy or innovation. As for her future: reality, as is true in most cases, probably lies somewhere in the middle. Midway may not last another 25 years, as some state—the rush of technology may move beyond even her renovated capabilities—and, privately, even the most enthusiastic officers are not altogether sanguine about a half century old propulsion system (she still is fossil fueled) and hull, no matter how up to date the electronics, habitability, and aircraft support capabilities. She should, however, last a very active 10 to 15 years. In an era that seems destined to see a smaller and more thinly spread U.S. Navy fleet she will be a needed and gratefully welcomed addition.

CURRENT U.S. POPULATION

Mr. PACKWOOD. Mr. President, according to current Census Bureau approximations, the total population of the United States as of June 1 is 209,157,982. This represents an increase of 101,471 people since May 1, roughly the equivalent of the population of Scranton, Pa. It also represents an addition of 1,761,841 people since June 1 of last year, an increase which is about the equivalent of the population of Philadelphia, Pa.

THE 50TH ANNIVERSARY OF THE ORDER OF THE RAINBOW FOR GIRLS

Mr. FANNIN. Mr. President, one of the finest organizations in our Nation is the Order of the Rainbow for Girls. This year marks the 50th anniversary of the founding of the organization.

This event will be celebrated by the Arizona Grand Assembly in Phoenix June 21–24.

A news release in connection with this event describes the founding and objectives of the Rainbows.

Mr. President, I ask unanimous consent that the article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

THE RAINBOW FOR GIRLS

The Order of The Rainbow For Girls is an International fraternal organization composed of teen age girls, sponsored by Masonic Lodges and Eastern Star Chapters. It has an active membership of more than 275,000 girls with over 850,000 majority members, or those who have attained the age of twenty. Over a million teen age girls have been initiated into the order since its founding on April 6, 1922, by W. Mark Sexson, a Mason and minister.

The organization started in the City of McAlester, Oklahoma. It spread rapidly throughout Oklahoma, surrounding states, the nation and into foreign countries. A girl does not have to be of a Masonic family to join, but recommended by a Mason or Eastern Star member.

Rainbow teaches ten outstanding things: a belief in the existence of a Supreme Being, the great truths in the Holy Bible, to seek dignity of character, a conception of the higher things in life, effective leadership, church membership, patriotism, cooperation with others, love of home, and above all Service to humanity.

There are 52 Assemblies in the State of Arizona, with a membership of 2,500 girls. Over 1000 of these girls will be in attendance at Arizona 39th Grand Assembly Session, at which time they will celebrate the founding of their Order. Installation of the newly appointed Grand Officers will be on Saturday night, June 24, 1972. The guest speaker for the evening will be the Honorable John J. Rhodes, congressman from Arizona.

A great single honor has come to Arizona in the fact that the Grand Worthy Advisor, Miss Niki Kyle of Phoenix, will serve as the Acting Supreme Worthy Advisor at the Biennial Supreme Assembly Session to be held in Oklahoma City, Oklahoma, in July of this year. Rainbow Girls from all over the World, and their Adult Advisors, will be in attendance to celebrate the 50th Anniversary of the founding of the International Order of the Rainbow For Girls.

Mrs. Gladys C. Skidmore of Tucson, who is the Supreme Inspector in Arizona and Supreme Hope, will also attend, as will two bus loads of 38 each of Rainbow Girls from throughout the State of Arizona, plus many who are going by car.

The girls going by bus will also have an extended trip on the way to Supreme Assembly, going to Carlsbad Caverns, San Antonio, Houston, to see NASA Space Center, the Astrodome, then on to Dallas before arriving at McAlester, Oklahoma to visit The Rainbow Temple, and the founding place of Rainbow, and finally to Oklahoma City for their meetings.

STATEMENT OF NATIONAL COUNCIL FOR A RESPONSIBLE FIREARMS POLICY, INC.

Mr. BAYH. Mr. President, organized opposition to the passage of effective gun control legislation is a familiar fact of life that has been with us as long as Congress has faced the issue of limiting

criminal use of firearms. That this strident voice is not the voice of the people is also a familiar fact of life. Those who doubt this should consult the recent reviews of the history of public opinion polls on the subject which have appeared in the press. Lacking the financial support of any group comparable to the firearms industry and lacking governmental inducements equivalent to the civilian marksmanship program, the voice of the people has been quiet and generally less effective than that of the organized few.

At the time of the assassinations of the 1960's, a group of prominent citizens took upon themselves the obligation to redress the balance and voice the concerns of the people. Calling themselves the National Council for a Responsible Firearms Policy, this group, led by its president, James V. Bennett, former Director of the Federal Bureau of Prisons, has been a source of quiet sanity on the firearms question ever since. The statement issued by the council in reaction to the tragic shooting of Governor Wallace is an excellent example of the wisdom the council has brought to the debates over gun control. I ask unanimous consent that the statement be printed in the RECORD.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

A STATEMENT ON THE SHOOTING OF GOVERNOR WALLACE

Once again, in yet another national political campaign, the shooting of a public figure has shocked and shamed the nation. We hope and pray for the quick and complete recovery of Governor Wallace and those with him who were also shot.

In their deep and justified anguish over this violent attack on the life of a man and on the politics of a democracy, the American people and their leaders should not lose sight of the fact that the May 15 tragedy exemplifies the violence with guns that strikes increasing numbers of Americans every day.

Reports of the criminal use of guns in America have become as much a part of our daily fare as the ball scores and the stock market quotations. Lives are lost, bodies are broken, families are fragmented, and the fabric of law, order and justice is torn and tarnished, with growing frequency. We pay a shocking price for the extraordinary permissiveness of Federal, state and local laws affecting the possession of guns and ammunition. But the price has apparently not gone high enough to trigger the national awakening and reform that are long overdue.

These escalating statistics of national negligence are punctuated now and then by the shooting of a nationally known figure. But even such attacks have not been enough to rouse America's resolve to stop the carnage that in this century alone has already taken more American lives than all the wars in American history.

In our own time, the assassination of a President was not enough to move this nation to remedial action. The assassinations that rocked this nation in the awful spring of 1968 moved the political system only part of the way, and even then with great difficulty, toward keeping guns out of the hands of people who lack the most basic credentials for responsible gun ownership.

Nowhere in the United States has government provided adequate protection against the possession of guns by those who are patently irresponsible by any reasonable standard, or who are incapable of assuming the level of responsibility which the legal possession of guns should demand. The nation needs a national policy establishing nationwide, minimum standards for the licensing of firearms ownership, and for strict personal accountability for the proper keeping, use and disposition of every legally owned firearm.

Such a national policy is the basic responsibility of the Federal government. But the Federal government is not ready to act. The Administration is waiting. The Congress is waiting. America is waiting. What statistic are they waiting for?

The National Council for a Responsible Firearms Policy will continue the struggle for sanity and responsibility in the nation's policies affecting possession and acquisition of the most destructive instruments of violence. Without such reform, the cry for "law and order" is at best a naive hope, as empty a slogan as ever entered our national dialogue.

We invite all Americans, including responsible gun owners and our political leaders at every level of government, to join our campaign for a safer and stronger America.

AMERICANISM ESSAY CONTEST AWARDS TO WICHITA FALLS, TEX., HIGH SCHOOL GRADUATES

Mr. TOWER. Mr. President, each year, the Rotary Club in my hometown of Wichita Falls, Tex., conducts an Americanism essay contest. Participants represent the graduating classes of each of Wichita Falls' four high schools.

On May 18, 1972, awards were presented to four young women whose essays were determined most outstanding from each school. Their cogent remarks on the subject "What America Means to Me" provide an insight into the strength of conviction we may expect from our leaders of tomorrow.

I am proud today to share with the Senate their thoughts of liberty, equality, and responsibility under the law.

Mr. President, I ask unanimous consent that the text of each essay be printed in the RECORD.

There being no objection, the essays were ordered to be printed in the RECORD, as follows:

WHAT AMERICA MEANS TO ME

(By Carol Reed of Hirschi High School)

To me, America means a great and powerful country, a safe and secure place to live. I know that I possess freedom. I have the opportunity to go wherever I please and achieve whatever goals I desire in life.

We have equality in this country and the right to speak out against anything we do not agree with. The opportunity is always there if we want to voice our opinions and try to make changes.

We are free to travel this country to visit our fine museums, National Parks, libraries and the seat of our Government or the White House.

I can worship in the Church of my own choice, live in any of our fifty great states, attend the college I want and have the right to decide my future vocation.

In order for a person to be happy and prosperous in this world, I believe one should enjoy whatever it is they do. I am proud of my American heritage and ancestry.

We have privileges some other countries would not dare allow people to possess. We are liberated from slavery, imprisonment or other restraint.

Freedom of the press enables us to keep up with current events and world news, right as it happens.

The people of this country have a voice in the government. We are able to vote for qualified representatives who will run this country to their fullest potential.

We live in an affluent society well supplied with material and spiritual possessions.

What America means to me, is that when I look at the American flag and pledge my allegiance, I feel honored—proud and wish that others less fortunate may someday feel the kind of security besowed on us.

WHAT AMERICA MEANS TO ME

(By Kathleen Tichnor of Notre Dame High School)

To me, America is more an attitude, a mode of living, than a distinct topographical area. I have traveled and known many parts of this country and of various foreign countries abroad. Consequently, all my associations with home and a people I can identify and align myself with have settled with the American way of looking at the world and of tackling problems rather than with a specific location.

In Europe, an iron-clad traditional past prevails over every attempt at real free thinking. Each flower of change must struggle upwards through the clutter of the thousands of years gone before it. More obvious than any other basic difference in attitude between the Old World and the New is the lack of comfortable familiarity with the government which is enjoyed so much within our own boundaries. I have witnessed the adages that American parents are wont to tell their offspring of the violence and oppression by police states. I have been subjected to the irritating inconvenience of constant checking of identification papers and travel permits by harsh young men armed with virtual arsenals of weapons. I have stood while meticulous officials shifted through my clothing and possessions in search of some tiny proof of the aggressive nature of my country. And I have seen children and parents, wives and husbands, leaning out of second story windows to wave comfort and encouragement to their loved ones on the opposite side of a formidable wall—a wall cleaving apart their city and their families. In America, if I keep within the laws, which are only a working agreement of my citizenship, I need never face a fear of simply living day to day.

In contrast to the uneasy, almost fatigued spirit of the Europeans, I have found Americans to be a vibrant, precedent-setting people. Unsophisticated in the sense of unaffected, as a whole we are energetically sincere and determined in our lives as witnessed by the colorful and explosive expansion of our frontiers in land, government and technology. We have fruitfully cultivated the abundant earth between two oceans; established a government which spearheads world-wide activity; and set our collective foot on the moon, the stepping stone between this globe and the universe. The products of our own artists influence all other civilized cultures and the strictly American art forms can be obtained and enjoyed anywhere: jazz is sold and played constantly in the tiniest music shops in Paris, pop art museums are frequented by enthusiastic patrons in Frankfurt, and blue jeans are the most stylish type of dress for young people from London to Rome. We are loved by some and hated by some, but there is no denying that the American touch is unique and universal.

When I originally pledged to uphold my citizenship while living abroad I was not aware of the various and contrary viewpoints toward my country held by non-Americans: the stereotype of a coarse but wealthy figure, the concept of a powerful and overbearing government. After seeing for the first time through the other fellow's eyes, I was forced to evaluate my nation objectively. At worst there are times when our government tends to be over-involved and under-experienced, meddling in other nations' affairs like a tireless neighborhood gossip dashing eagerly from kitchen to kitchen. At best we think,

write, and legislate toward what we believe to promote the finest ideals in our Constitution, regardless of social or world opinion. My personality is such that my loyalties have been formed through appreciation of all the traits of America, as a nation and a people.

WHAT AMERICA MEANS TO ME

(By Delberta Coppage of Rider High School)

When you ask what a nation means, the answer must take in the many aspects of that nation, for many people see much about a country that makes it special to them. To me, America means the land, the people, and the past. Vast stretches of gently rolling hills covered with thickly-matted prairie grasses, rugged mountains deeply carved by time, forests crowded with trees that reach a sky so blue that even the seas are jealous, lush tropical swampland, and deserts burned to a dry, dusty white; these make America special to me for they fill the land with variation. And my America is always changing, always new.

The cities, too, show variety in even tiny villages where everyone knows everyone else, the quiet complacency of suburban living, and the hurry and excitement of the giant cities where discovery lies around every corner. Even the seasons show change at every turn with the dry, hot winds of the southern summer and the bare warmth of the north, the burst of freshness that comes in the spring, and the deep, colorful autumns that grow in beauty and crispness as they creep into winters either mild or harsh. My America means majesty and beauty.

After a land has been created, a people must come to live in that land. Many countries were founded by nomadic tribes who happened to find good grazing land or by warriors who had the strength to subdue the original inhabitants, but America was founded by people from all over the world, people who had a dream of freedom and a desire for a beautiful land in which to make that dream come true. The land was there, ready for those who would claim it, and the people came: English, German, Irish and Scottish, Italian, Russian, Norwegian, and Chinese, all in search of a reality to fit their dreams and each adding his own to that one dream of freedom. Each new American changed the picture of this nation just a little, and each new interpretation of freedom added a new dimension, a variation to America. And my America is made of the strength of dreams.

It has been through time that the dream of freedom has become a reality. Since this nation began, the wars it has fought have been to free people, and throughout the past Americans have constantly strived to unfetter the minds of their children. The people have always been hardy and strong—strong of body and of mind—hard-working and filled with adventure and daring. Formality has never repressed this free and easy people as it has other nations. The history of America is filled with the heroic deeds, the chivalry, and the courage of thousands of stout-hearted men and women who loved their country more than life. This is the people, bred in this great land, who created a glorious history for this great nation. This is my America, always changing, majestic, and forever built of great dreams.

WHAT AMERICA MEANS TO ME

(By Jan Spalding of Wichita Falls High School)

America is Red, White, and Blue. I guess this about sums up my ideas on America; that is, sacrifice, freedom, and courage.

History has taught me that our forefathers had to show much courage and suffer through great sacrifices to win the freedoms and privileges that we enjoy and take for granted today. Even today these same qualities continue to keep our country the best place on earth to live. People complain constantly about taxes, crime, poverty, discrimination, and apparently senseless wars, but in every case the problem is greater in other countries than it is here in America. We still have plenty of inequities and injustices in our great country, but we have come a long way from the time our ancestors fled from the anarchist society of Europe.

Sometimes people get carried away with their freedoms. For instance, some say there are too many poor people and the rich keep getting richer, but they forget that our system of free enterprise is responsible for making our nation the strongest, wealthiest, most self-sufficient country in the world. Our achievements in science, medicine, and other fields of technology could have been achieved only under our system of material rewards for initiative and recognition for imagination. Perhaps our greatest achievement lies in the field of human dignity. Of course, we still have problems of hunger, poverty, and discrimination, but nothing like these same problems that exist in countries that have tried other types of government and rewards for achievement.

What about wars? There is no way that two hundred million people can come to a decision about how to defend our rights and freedoms. We must depend on the wisdom of our elected officials. One thing we know for sure. Since the time our ancestors won that first war for freedom back in 1776, we have not had to actually protect our homes and families, nor have we had to defend our shores from an attacking enemy. Thank goodness for the wisdom and foresight of leaders who have kept the battle away from our doorsteps.

America may not be perfect, but it is definitely way ahead of second choice. The happiest part is that we are still making progress in our struggle to deserve the Red, White, and Blue.

ANCIL HORACE PAYNE

Mr. PACKWOOD. Mr. President, Ancil Payne is one of the outstanding citizens in the Pacific Northwest. For several years it was my pleasure to know Mr. Payne as one of Oregon's first-rate broadcasters. He has now moved from Oregon to Washington State, where he continues to distinguish himself as a leading citizen and top notch broadcaster.

I ask unanimous consent that an article about Ancil Payne, published in the April 24, 1972, issue of "Broadcasting" be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

NEW MAN IN CHARGE OF KING STATIONS' NORTHWEST PASSAGE

The news last December that Ancil Payne had been elected president and chief operating officer of King Broadcasting in Seattle was surprising. After all, since this company was first formed and went into the broadcasting business in 1947 it always had been led by a member of the Bullitt family. First there was Dorothy Stimson Bullitt, known as a remarkable woman of grace and ability. Of her it had been said that when her husband, A. Scott Bullitt, died in 1932 and left her sole heir of his real-estate and timber interests, "Dorothy went down to the office to see what it was all about and found she had a flair for commerce."

Mrs. Bullitt ran King Broadcasting for 18 years, relinquishing day-to-day control to her only son, Stimson Bullitt, an attorney, in 1965. Mr. Bullitt, culturally minded, with a deep interest in politics (he ran unsuccessfully for Congress), is an idea man, apparently enjoys the philosophic side of business, likes to think in terms of what's going to be 25 years from now, but dislikes the details of everyday management. Last year, in the throes of a bad earnings period Mr. Bullitt decided that responsibility for management of King Broadcasting should be carried by the young business man he invited into the company in 1959, Ancil Payne.

Such a change in corporate direction is important news in the Pacific Northwest. Observers of Pacific Coast business point out that when the *Los Angeles Times* sneezes, Southern California says "gesundheit," and when King Broadcasting itches, Seattle, Portland and Spokane scratch.

An overstatement? Consider the lineage and influence. A. Scott Bullitt was a prosecuting attorney in Kentucky (where a county is named after his family) whose career reached a dead end when he decided to close the race tracks. He went to Seattle to practice law, and become a mover in Democratic party politics, ran for governor (unsuccessfully), was among the original group of people to support Franklin D. Roosevelt for President, was said to have given now-Senator Warren Magnuson (D-Wash.) his first job, was rumored to be in line for a cabinet position when he died of cancer.

The woman Mr. Bullitt married came from that exclusive group of people that in the social community in Seattle—as in most pioneering areas—sort of ran the whole thing: The straits, the lakes, the rivers, most everything, are named after this coterie of families.

Some 15 years after her entry into the business world, via the Stimson Realty Co., which her father had started, Mrs. Bullitt, in 1947, moved into broadcasting by buying the interest of what was then KEVR(AM) Seattle. Now King Broadcasting is a powerful duchy, probably the most important radio-TV group serving the Pacific Northwest.

Ancil Payne came into the King organization knowing next to nothing about broadcasting. What really impressed him about television in the early days was when an appearance by Democratic congressional candidate Helen Gahagan Douglas caused an arch conservative of Mr. Payne's acquaintance to switch his vote. By God, thought Mr. Payne, if a liberal like Helen Gahagan Douglas can reach a terribly conservative mind, it must be a tremendously effective medium.

Now he's no longer surprised. "The only problem with television," he says, "is its own success. It's so powerful and so instrumental in our lives that it's blamed for everything." Characteristically, though, Mr. Payne—a realistic, progressive thinker—won't settle for merely pat explanations. "We do have a lot of responsibilities we haven't met, obviously."

The corporate area of broadcasting with which he must deal responsibly now includes nine broadcast properties—an AM, FM, TV each in Seattle, Portland and Spokane. The Spokane TV is an ABC-TV affiliate, while Seattle and Portland are in the NBC–TV lineup. King Video Cable Co. owns 13 cable TV systems on the West Coast, serving some 27,000 subscribers, and is looking to expand. Northwest Mobile Television System consists of two color-equipped television trucks that are offered for contract or lease. King Screen Productions, which produces educational films for schools, once won an Academy Award for the documentary film "The Redwoods." Northwest Sound Service provides sound-mixing facilities. The real estate division owns two downtown Seattle office buildings and other properties in Washington and Canada.

Among other interests absorbed when King Broadcasting took over the Bullitt Co. (the successor to Stimson Realty), are timber holdings on Samar in the Philippines and Hollymark, a shipping company that deals in

log-trading to Southeast Asia out of Hong Kong.

There have been some failures. King Broadcasting was too heavily diversified in too many areas the company knew too little about. *Seattle* magazine, for example, though a monthly publication to take pride in, had to cease publication, a victim of rising costs and slumping local economy.

One of the serious problems with diversification, it was decided, was that King couldn't provide the proper management from its thin ranks. For a number of years, with Ancil Payne as spearhead, King has been doing extensive college recruiting, bringing in new blood from the Ivy League and California to meld with the clean-scrubbed Swedes of the Pacific Northwest.

Ancil Payne, himself, was recruited by Stimson Bullitt. The two got to know each other when Mr. Payne's candidate for Congress, Hugh B. Mitchell, ran against and handily defeated Mr. Bullitt, in a Democratic primary election.

Mr. Payne, a son of the Pacific Northwest, has had political overtones through his life. Besides serving as assistant to Congressman Mitchell, his wife, Valerie, is the sister of a former congressman from upstate New York, John Davies. They met when she went to work in Mr. Mitchell's congressional office.

As leader of King, he thinks about the future a lot. Cable is great, he says. "It has a commanding and a viable and a fascinating future ahead. But it's ahead. It's not in the immediate future."

If Ancil Payne has anything to do about it, King will be involved in both cable and broadcasting. "We [broadcasters] keep thinking in terms of either/or," he says. "And it's not either/or. The two are complementary."

Ancil Payne lives in a harem of a wife and three daughters. "We finally got to the point where we got a male dog," he says in his charming manner, "and the ——— ran off. He couldn't stand it either."

THE NEW YORK TIMES AND THE IMPEACHMENT OF THE PRESIDENT ADVERTISEMENT

Mr. TOWER. Mr. President, on Wednesday, May 31, the New York Times carried a two-page ad that called for the impeachment of the President. This ad might have been pitifully humorous if it were not for its timing and the blatant political purposes behind it. The ad came at a time when the President was on a journey for peace. The purposeful intent to embarrass the President was obvious, yet the New York Times did not even require the usual political disclaimer. It appeared almost as if the Times endorsed the ad.

Mr. President, the pressmen at the Times saw this for what it was and initially refused to print it without a disclaimer of some sort. However, Mr. Sulzberger refused to order the disclaimer and ordered the men to print it anyway. The ad was printed and did appear and the only thing that happened was damage to the prestige of the New York Times.

Mr. President, the President of the United States will not be hurt by such ads. In fact, most probably he will be aided, for the American people recognize politically inspired attacks when they see them, even if they are not properly labeled. The only ones who will suffer will be the small men who are behind the ad, the candidates they support, and the paper that refused to mark the ad political. These men spent over $17,000 from who knows what source and in the end embarrassed only themselves. Their ineptitude would be humorous if it were not dealing with such a serious subject.

NOMINATION OF RICHARD G. KLEINDIENST

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate in executive session will now resume the debate on the nomination of Mr. Richard G. Kleindienst for the office of Attorney General of the United States. The question is on the confirmation of the nomination of Mr. Kleindienst to be Attorney General of the United States.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. BAYH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BAYH. Mr. President, it is not without some significant degree of reluctance that I rise to address the Senate on the matter of the nomination of Richard Kleindienst to be Attorney General of the United States. Those of us who have been involved before with the question of Presidential nominees do not eagerly or lightly seek to engage once again in confrontation with the President over his choice for high official position. There are some prophets who appear to have the ability to look into the minds of those of us who serve in Congress and attribute motives to all of our deeds. Those who suggest that I feel this kind of confrontation is a thing to be relished have not had a chance to get a very good focus on the mind of the Senator from Indiana. Indeed, in the case of a Cabinet appointee, our reluctance to rise in opposition carries almost to the level of acquiescence to the President's wishes—for Cabinet officers are creatures of the President's will, and serve at his pleasure in order to effectuate his policies and his goals. It is not our business to oppose a President's nominee for a Cabinet position, because we disagree with his views on the issues, or because his philosophy is offensive to us. Indeed, we have all said as much, in our original reports on this nomination.

There may be times when the individual nominee's philosophical beliefs go so far as to be irresponsible. At that point I think a Member of the Senate, in exercising his or her advice and consent responsibility, has the responsibility to speak out. But just differences of degree with respect to philosophy, and differences of opinion on some of these specific issues that might be hotly debated are not, in the judgment of the Senator from Indiana, sufficient to cause a Member of the Senate to interpose an objection with respect to a Presidential Cabinet nominee. I spoke at some length relative to my feeling about this in connection with the nomination of Secretary of Agriculture Earl Butz.

I joined with Senators TUNNEY and HART in separate views on Mr. Kleindienst's nomination. Though we approved of his nomination, we felt it incumbent upon us to list the areas in which we felt strong disagreement with the nominee. We approved of his nomination—though not of his policies—because—

Members of the Cabinet, unlike Justices of the Supreme Court, serve at the pleasure of the President as his assistants. The policies they pursue will, almost inevitably, follow the President's position. He must work wtih them. Therefore, absent personal impropriety, incompetence or disqualifying conflict of interest in the nominee, the President is entitled to the man or woman of his choice. The Senate's role to advise and consent on cabinet appointments should be exercised within this limited framework.

The Senate's role is very different in the case of appointments to the Supreme Court. Its members serve for life and are responsible to the Constitution alone, not to the President who appoints them. When reviewing judicial nominees, the Senate must exercise a more substantial function.

We were prepared to let the matter rest there. My enthusiasm for Mr. Kleindienst's views has not increased; my disagreement with the policies of the Justice Deartment has not waned. Yet I did not then, and do not now, feel that it would be appropriate for the Senate to attempt to dictate to the President who he can or cannot have as members of his Cabinet, merely because we happen to harbor disagreements—however strong—with the particular views and policies espoused by the President's nominees.

That is not to say that I treat lightly the disagreements which I have with Mr. Kleindienst's views and the policies which he has stated he will carry out. I have had the opportunity, in my capacity as a member of several of the subcommittees of the Committee on the Judiciary, to debate these differences at some length with the nominee. I cannot understand why, for example, the Department of Justice, and Mr. Kleindienst, are so reluctant to recognize the alarming implications of juvenile crime in this country, and why they are so unwilling to commit the resources necessary to deal with this most serious of social ills.

We do a great deal of talking about crime. After Attica, the Attorney General of the United States made a very compelling speech about recidivism. Yet, recidivism starts with how we treat first offenders, how we treat juveniles; and we are committing far more of our resources to hardware in connection with law enforcement than we are to dealing with social problems, the unique problems of individual first offenders. Words alone are not going to limit the numbers of those who would rob and rape and pillage our society. It takes an investment in resources to try to deal with the problems of human beings.

The majority of those buy Saturday night specials. Nor can I fathom why, with hundreds of policemen killed by handguns in the last few years, and 8,000 citizens last year slain by handguns, 5,000 of these by Saturday night specials, and the assassinations and attempted assassinations of political leaders that have been going on in this country—the

majority involving Saturday night special handguns, Mr. Kleindienst refuses to support the most reasonable efforts to rid the Nation's streets of these killer weapons.

The Justice Department has testified before my committee on several occasions—and as long ago as 1970—that there was a tremendous loophole in the 1968 gun law which permitted approximately a million of these cheap weapons a year to come into this country by import—import by parts and then assembly in this country—which, in effect, has circumvented our prohibition of importing this kind of weapon. Yet, despite their recognition of this problem, they have been unwilling to take the political lead necessary to plug up this loophole and stop the proliferation of these weapons across the countryside.

I have already said that I find Mr. Kleindienst's attitude toward basic civil liberties unacceptable. Mr. Kleindienst would have us rely upon the self-restraint of political officials for the protection of our civil liberties. But we rely upon the constitutional authority of life-tenured judges—not the easily swayed self-restraint of political appointees for the protection of our liberties.

I happen to be a political official; and as much as I would like to feel that I would have the sensitivity and the wisdom and the good judgment to know where we are to draw the line, I do not want to have on my shoulders—nor do I think any of the rest of us who serve in an elective capacity would want to have—the responsibility to determine where the line of restraint should be drawn.

Mr. Kleindienst would have us put the sole authority to conduct electronic surveillance of our citizens in the hands of bureaucrats and political appointees where the Constitution requires the authority of the impartial magistrate. I must suggest, Mr. President, that I do not care what administration is at the White House and is controlling the Justice Department. I want to have removed from the political arena the magistrate making the determination as to who is tapped and who is bugged.

Mr. Kleindienst seemingly also is unconcerned about the gross invasions of privacy that have too often resulted from abuses of Government intelligence gathering. This is alarming to me—not just because of what is happening today and where we are today, but because of what this portends for the future direction of our country. I do not want our Nation to become a "Big Brother" nation, where we have fear to converse in the privacy of our homes or offices, or to glance over our shoulders, for fear that someone may be watching, someone may be listening.

Despite all the tough rhetoric about law and order and crime control, it seems apparent that crime in America is still a growing problem and that the administration's efforts to deal with it have often been inefficient and misdirected. In the administration's frantic haste to present the American public with the appearance of crime control, the administration has breached the Constitution and created an unparalleled wave of concern and distrust. But these disagreements are not enough, of themselves, for the scope of the Senate's inquiry is not so wide. This is a matter of decision for the electorate when they have the opportunity to choose in November.

Because of the narrow scope of the Senate's advise and consent function with respect to Cabinet nominees, we are reluctant. And we are reluctant for other reasons as well. When the nominee is put forth by a President of an opposite party, inevitably the cry is raised of "partisan politics" if there is any opposition.

But it was not partisan politics that led almost half of the members of the President's own party to oppose one or both of his most disputed nominees for the Supreme Court. Nor is partisan politics involved in this nomination, despite allegations to the contrary by some of our colleagues.

I can only look upon the raising of such charges as an attempt to avoid discussion of the real issues.

Now I have read the comments of my distinguished colleagues from Nebraska and Arizona, where they suggest that this whole exercise has been nothing but political headhunting. I can only repeat that it is rather dismaying to hear this argument, for nothing could be further from the truth. It was not politics that led us to oppose the confirmation earlier of judicial nominees—not unless we suggest that 20 members of their own party would play politics with this issue—it was a sense of devotion to the Constitution. And it is no more politics that has led us to oppose the confirmation of Richard Kleindienst. Rather, it is our doubts as to his qualifications and our concern over the erosion of trust that has been occuring in this country now over a period of years.

It must be recalled that Mr. Kleindienst had previously been unanimously approved by the Judiciary Committee—by those who liked what he had to say, as well as those of us who didn't care so much for his views. I voted for him. We all voted for him. And despite our differences, we found him to be personable and fair minded in our hearing. No one can doubt that Dick Kleindienst is a personable and likable individual.

Yet the issue which underlies this whole controversy, in a sense has nothing to do with that earlier vote. This has become a basic issue of credibility—the credibility of the nominee, indeed the credibility of the government itself.

This is no partisan issue. The credibility gap has nothing to do with any particular party or administration. We read from reports of over 100 years that seldom has there been an administration that has not been criticized for having a credibility gap—from a narrow gap to a large gap. This may be a new phrase, but it is not a new issue.

The frustrations of the war; the alienation of the young people; the hostility of minority groups; the disaffection of millions of ordinary citizens with the precesses of government—a lack of candor and credibility lie at the bottom of all these ailments. The obligation of government is to govern, not merely to reign—and government in our Nation rests upon the informed consent of the people. If the people are not told the truth—if the people cannot feel that they have confidence in their government—if they are suspicious of the motives of those in positions of power—then can we truly say that the people have given their informed consent to be governed? For is not the essence of being informed being told the truth? As Thomas Jefferson wrote some 150 years ago:

> Enlighten the people generally, and tyranny and oppressions of body and mind will vanish like evil spirits at the dawn of day.

And I daresay that many of the ills that beset this country today could also be dealt with by liberal doses of plain truth. I do not mean doses of liberal truth, I mean liberal doses of the plain truth.

Mr. President, I ask unanimous consent to have printed in the RECORD an editorial from Life magazine, by Hugh Sidey, the veteran White House correspondent, dealing with the precise question of which I have spoken—the responsibility of Government for the continued deterioration of public confidence.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From Life magazine, Mar. 31, 1972]

THE PRESIDENCY—WHAT MAKES THE MARE GO

(By Hugh Sidey)

Not long ago, on an airplane between New York and Washington, a man studied a front-page newspaper story on the ITT case and then spoke to his companion. "Nixon's Achilles' heel may not be the economy or Vietnam or any of those things. It may be this," he said, thumping his paper. "There's more of this than most people realize. I know. I've had to get a few things done myself."

The man was not so much accusing as stating a fact about a traditional ritual of power that seemed to have gone wrong. In the political game now being played, appearances are just as important as reality, and appearances are terrible.

The spectacle of memos being found, forgotten, shredded, leaked and denied, of memories being refreshed and dates being changed, has cast suspicion over the entire administration. The White House is nervous. Nixon sees the rosy picture of his China triumph being smudged. The White House contact man with business, Peter Flanigan, is more shaken than ever before in his controversial three-year public career. What should he do? he asks visitors in all sincerity. White House operatives Robert Finch and Herbert Klein rushed to dampen fires in California touched off by LIFE's disclosures of influence and justice-tampering last week. Vice-President Agnew stood at planeside and in a remarkable statement said he would like to see LIFE (whose charges are at this writing still unchallenged by the White House) go broke like *Look*. In St. Louis, top business executives refused comment when the *Post-Dispatch* phoned to ask about a meeting in which former Secretary of Commerce Maurice Stans, now Nixon's chief campaign-fund raiser, urged them to get their contributions in before a new disclosure law takes effect on April 7. Columnist Jack Anderson published more alleged secret ITT memos showing ITT dealing with the CIA like some independent nation. Investigative reporters were raising questions about the old Nixon law firm of Mudge, Rose, Guthrie and Alexander, whose fortunes soared after Nixon and John Mitchell, former senior partners, moved on to Washington. Even more fascinating was the story

of Herbert Kalmbach, an obscure California attorney who happens to be Nixon's private lawyer. According to one Washington authority, he now "has the goddamndest bunch of clients lined up outside his door that you've ever seen."

In all the din, a larger problem was obscured. Just what should be business's correct relationship with people in positions of public authority? Certainly business needs to make its wishes known, as much as does labor (which has not been overly reticent in the last decades) or Ralph Nader, the consumer evangelist who has used every lever of influence he knows. Gleeful Democrats pressing the current investigations would no doubt prefer not to think about those shadowy figures from their own party's past, who helped set up big government in Washington in its present form, then left it and waxed fat showing clients and corporations how to discover tax loopholes and circumvent laws they had themselves help to write.

'Business," snorted Lyndon Johnson once when he was battling the big interests, "is what makes the mare go." He knew the country ran on the profit motive. John Kennedy knew it too. Even during his fight with big steel, he never quite shook off the capitalist pragmatism of his father Joe, the fellow who amassed the Kennedy fortune. "They're our partners," he once said to a reporter. "We're in this together, I want business to do well. If they don't we don't."

Influence is a bipartisan phenomenon, but the Republicans have addeed a new dimension. Maybe it's naiveté—what they do they seem to do so clumsily. Or maybe it betrays a kind of insensitivity, a lack of understanding of the role of modern public figures. In any case there is an evident conflict between the things everyone can see the Republicans doing and Nixon's own call for new spirtiual values. The administration's Puritan ethic evidently applies to everything but the pocketbook.

One thing would help. True candor. If ITT is so big that its machinations now affect the balance of payments (as the firm argued in pleading against an antitrust suit), then its business is very much the public's business. If ITT is so formidable that it is dealing with the CIA and intriguing in foreign countries, then more than ever it should receive public scrutiny. It is possible that even if the ITT case had been conducted entirely in the open, the firm might have received the same settlement. It would certainly be more acceptable if it had been arrived at without the squalid epic of backroom influence from Kentucky to Washington.

Up on the Hill at the ITT hearing room a few days ago a young man with fire in his eyes waited for a seat. What for? "Because I want to hear them lie," he spat. He may have it all wrong. But this new bitterness between the administration and a goodly number of American people didn't begin in the street around the Pentagon. It began in the secluded chambers of power with which this administration still seems to think are its private preserves, where matters too lofty and complex for common comprehension are dealt with. It is, once again, a policy of noncommunication, and it is an added insult to the American intelligence.

Mr. BAYH. Mr. President, Mr. Sidey's article points out all too clearly the impact of the past few months hearings into the Kleindienst confirmation and the ITT affair upon the public confidence. And I believe most disturbing of all is his report of the young man waiting outside the hearing room for a seat, who—when asked why he wanted to see the hearings—answered, "Because I want to hear them lie."

Mr. President, if this is to be the legacy of this matter, then the Senate had better examine carefully all the relevant facts and circumstances, and not be so quick to throw around charges of politically motivated delay and dilly-dallying, which I have heard alleged by some of my colleagues. This is an extremely serious matter, and we would do better to discuss the issues than to discuss each other's motivations—or alleged motivations.

It is to the great credit of Richard Kleindienst that he himself recognized these basic issues. For it was Mr. Kleindienst—to his credit—who asked for renewed hearings into his nomination when the serious allegations of the Beard memorandum were raised. He realized how important it is that high public officials not operate under the cloud of suspicion, and he asked that the new charges raised by Jack Anderson's column be fully aired, so that the cloud of suspicion arising out of the Anderson articles could be cleared away. Mr. Kleindienst's testimony before the renewed Judiciary Committee hearings began as follows:

The reason why I asked for this hearing, Mr. Chairman, and members of the committee, is because charges have been made that I influenced the statement of Government anti-trust litigation for partisan reasons. These are serious charges, and by virtue of the fact that the confirmation of my nomination as the Attorney General of the United States is before the U.S. Senate I would not want that confirmation to take place with a cloud over my head, so to speak, nor would I want the U.S. Senate to act upon my nomination if there was any substantial doubt in the minds of any of the Members of the U.S. Senate to the effect that while I performed my official duties on behalf of the U.S. Government in the past 3 years as the Deputy Attorney General, that I engaged in any improper conduct or in any conduct that would go to or be relevant to the consideration of my confirmation by the U.S. Senate.

Thus, Mr. Kleindienst set a standard by which he wanted to be measured—and that standard, in his own words, was whether there was "any substantial doubt in the minds of any of the Members of the U.S. Senate" that while he had performed his official duties as Deputy Attorney General, he had engaged in any improper conduct, or in "and conduct that would go to, or be relevant to" the consideration of his confirmation by the Senate.

The question then would appear to be—are we sure that Mr. Kleindienst can meet his own test? I would add that it is a test to which Mr. Kleindienst subscribed even at the last day of the hearings. I asked him if he still felt that he would not want to take the Office of Attorney General with this cloud of suspicion hanging over his nomination, and he replied, "I still feel that way."

Now I do not think that any of us can be sure today just what all the answers are to the questions raised at the hearings. That is why I frame the central question here as whether we can be sure that Mr. Kleindienst meets his own test; for we have to admit that we simply do not know whether he meets it or not. In other words that the cloud of suspicion has not yet been cleared away; that there remain substantial doubts; and that the doubts ought to be resolved before this nomination is finally acted upon.

For if that is not done, if the Senate does not make every effort to get to the bottom of the issues raised at these hearings—the longest confirmation hearings in the history of the Senate—then the Senate will become party to a whitewash, and the public confidence, so severely torn over the past several years will be further eroded. If we vote to confirm Mr. Kleindienst without further review of the events and circumstances that have led to these hearings in the first place, if we vote to confirm Mr. Kleindienst and place our seal of approval on an affair that we all know reeks with suspicion, if we do not make a better effort to find some of the positive answers yea or nay, then we will have done precisely what Mr. Kleindienst did in the case of Harry Steward, the U.S. attorney from San Diego—where despite a finding by the Justice Department investigation of "highly improper" conduct, Mr. Kleindienst issued a statement saying that there was no wrongdoing on Mr. Steward's part. I ask unanimous consent to insert at this point an editorial from the Washington Post dealing with this matter.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

[From the Washington Post, June 2, 1972]

THE KLEINDIENST NOMINATION—II

One of the more advantageous aspects of the nomination of a sitting presidential appointee to the cabinet is that a bit of the guesswork is removed from the Senate's process of determining the nominee's fitness for office. This is particularly true when the nominee's prior service is in the department he is nominated to head. The man has a track record which can be examined and from which assumptions about the way he will conduct himself in the office for which he has been nominated can fairly be drawn. The Senate has such a fortuitous situation in the nomination of Richard G. Kleindienst to be Attorney General and it has an interesting case study in Mr. Kleindienst's handling, as Deputy Attorney General, of the matter of Harry Steward, United States Attorney for the Southern District of California.

In late 1969, federal agents investigating gambling in San Diego County became suspicious that a $2,068 payment made by the Yellow Cab Company in San Diego to an advertising agency had been, in fact, a concealed and improper contribution to the presidential election campaign of Richard M. Nixon in 1968. This suspicion and other facts developed in the investigation led to the impaneling of a grand jury in October, 1969. The grand jury issued a subpoena for Frank Thornton, executive vice president of the advertising agency. Following an unsuccessful attempt to serve the subpoena, the agents in charge of providing information to the grand jury were summoned to Mr. Steward's office.

Mr. Steward asked the agents about the Thornton subpoena and told them that he did not want it reissued. According to an affidavit sworn by David Stutz, one of the agents present at the meeting, Mr. Steward listed his close friendship with Mr. Thornton, and the fact that Mr. Thornton had gotten Mr. Steward his job as U.S. Attorney and was to try to get him a federal judgeship, as the reasons for quashing the subpoena. Mr. Steward said that he would talk to Mr. Thornton personally. Subsequently he did and reported to the agents that Mr. Thornton had explained the $2,068 item to his sat-

isfaction. He also told the agents to stay away from the advertising agency.

Subsequently, while Agent Stutz was pursuing an unrelated investigation—this one outside the U.S. Attorney's jurisdiction—Mr. Steward again thrust himself between the advertising agency and the federal agent, stating, "I am the U.S. Attorney and I'll tell you what to do. I have told Barnes-Champ (the ad agency) they don't have to give you any records. You are not to contact them again."

Subsequently, and after Mr. Steward had been summoned to Washington for a private conversation with Mr. Kleindienst, an administrative inquiry, including an FBI investigation, was instituted by the Department of Justice into Mr. Steward's conduct in these matters.

After the inquiry had been concluded, the Deputy Attorney General issued a press release which read, in part, as follows: "These charges were exhaustively investigated by the bureau and a report was made to the department. I have evaluated the matter and determined there has been no wrong-doing." Subsequently, however, Mr. Kleindienst was to admit in his confirmation hearings that he had never actually read the FBI report on the matter.

During the course of the Kleindienst hearings, Henry Peterson, the Assistant Attorney General for the Criminal Division, testified that he had been involved in and aware of both the criminal investigation that led to the quashed Thornton subpoena and the administrative inquiry which followed it. He characterized Mr. Steward's conduct in this matter as "highly improper," but defended the department's public exoneration of Mr. Steward as necessary to sustain a positive image of the government's chief prosecutor in Southern California as he approached the prosecution of a major tax case.

Although the Judiciary Committee puzzlingly refused to pursue a number of obvious leads, such as calling the investigators whose work was thwarted, the record in this case is still fairly clear. Whatever Mr. Kleindienst's intentions were, the fact is that from February, 1971, when the Department of Justice issued its press statement publicly exonerating Mr. Steward, until March, 1972, when *Life* published the story, the matter had been covered up and apparently buried. The Department's action, it seems to us, was indefensible in itself, but the reason given for taking it was astonishing. The actions of a principal federal prosecutor in impeding two investigations by federal investigators were swept under the rug, according to testimony before the Judiciary Committee, in order to maintain public confidence in law enforcement. And Mr. Kleindienst was involved in and in charge of the process throughout.

So we would add the Steward case to that part of the record of Mr. Kleindienst's career as Deputy Attorney General to which we hope the Senate would give the most serious consideration as it weighs this nomination for it seems to shed significant light on how the nominee might choose to maintain confidence in law enforcement if another high office in the field is entrusted to his hands. Yesterday, we discussed Mr. Kleindienst's inability or unwillingness to recognize a proposition made in his own office in the Department of Justice which federal prosecutors and a jury later decided was an offer of a bribe. Subsequently, we will discuss yet another event in the nominee's career, the ITT antitrust settlement, which we also believe the Senate should take heavily into account as it ponders how the cause of justice would be served by Mr. Kleindienst's stewardship as Attorney General of the United States.

Mr. BAYH. Mr. President, now how do the people of the Nation feel when they read that the Justice Department made findings of impropriety and wrongdoing, yet the Deputy Attorney General issued a press release saying that there had been no wrongdoing? And how will the people of the United States feel if the Senate approves this nomination without making the fullest efforts to determine exactly what happened, and exactly what responsibility should be laid at whose doorstep?

We have an extremely grave responsibility here, and we should not forget it. The Constitution places in our hands the obligation to advise and consent to the nominations of the President to executive positions. This advise and consent function is one of the key elements of our system of checks and balances, and within the limitations which I outlined earlier, it is our responsibility to make the fullest inquiry into the qualification and fitness of nominees for Cabinet positions. If this full inquiry is not made, then we shall have shirked our responsibilities, and rather than reveal the truth to the American people, we will only have aided its concealment.

We must remember why it is that it is so important for the Senate to continue to investigate this nomination until we have laid some of the questions to rest. As I said earlier, ordinarily the burden is not on a Cabinet nominee to establish any more than that he possesses integrity and minimum competence. But here, where the burden has been shifted—not merely because charges have been leveled by a newspaper columnist, but because the nominee and the President himself have stated that there was cloud over the nomination that ought to be cleared away—where the burden has been assumed by the nominee and the President, there ought to be a greater opportunity to meet that burden than the Senate now has before it. Mr. President, I state flatly today that the burden has not been met. I could not say with equal honesty in my heart that I know it has been met. I do not know. As I read this record, it is almost impossible to tell what happened. It is very easy to see that someone who came before that committee lied. Someone committed perjury. Yet I do not think that anyone who reads the record can say who it was who lied, or who it was who committed perjury—or that the burden has been met. Nor can anyone say that there are not great inconsistencies running at several points through the record.

Rather than clear away the cloud from over Mr. Kleindienst's nomination, the longest confirmation hearings in the history of the Senate have done nothing but darken and deepen that cloud of suspicion. Where we sought answers, we found only more questions. Where we sought truth we found only evasion, deception, and an impenetrable screen of poor memories, and a refusal to provide information. Very frankly, at least in my mind, from some of those witnesses we got thinly veiled lies. The inconsistencies, contradictions, unanswered questions, and incredible assertions run on in an almost never ending stream throughout the 7 weeks of testimony. The preposterousness of some of the testimony has to be read to be believed, and even then, one would have had to be present to observe the demeanor of some witnesses in order fully to appreciate the cavalier treatment of the truth at these hearings. There were instances at the hearings where no reasonable man could have drawn the conclusion other than that the witnesses were simply not telling the truth.

Despite the shocking lack of candor which too often characterized the hearings; and despite the unjustified refusal on the part of the nominee and the Department of Justice and on the part of ITT as well, to provide absolutely crucial information; and despite the refusal of the committee to hear witnesses whose testimony could have shed significant light on the whole matter; despite all this, the Senate of the United States is being asked to approve the whole proceeding, as if there was nothing whatever wrong with it all, as if nothing had ever happened at all. Let there be no mistake about it—for the Senate to approve the Kleindienst nomination without making the fullest efforts to get to the bottom of the questions raised at the hearings would be to do more than put the imprimatur of the Senate on Mr. Kleindienst as Attorney General. Such a course of action would also put the Senate's imprimatur on the whole mass of unresolved, inconclusive, and unanswered questions which these hearings so laboriously brought to the public attention. We would be on record as approving all of the evasion, all the deception, all the withholding of information—and as surely as ITT shredded its files to hamper our investigation, so would our approval of this nomination constitute a further shredding of the public confidence.

I for one cannot be a party to such an exercise.

Mr. President, just what are all these unanswered questions which I have been alluding to? What are all the inconsistencies and contradictions that were brought out during the hearings and need to be cleared up before the Senate confirms Mr. Kleindienst?

I would state at the outset that we have produced a statement of minority views which may be unprecedented—I cannot remember ever seeing such a document before in my 10 years in the Senate. As we can note, it is 128 pages of text, plus an additional 156 pages of appended material, bearing upon the matters raised at the hearings, and a fold-out chronology more than 4½ feet long. This document was not produced to exhibit our long-windedness, but rather to set out as completely as we could the issues which arose during the hearings, and to try to lay them out so that the 1,700 pages of testimony might make some sense to Senators who did not sit in the hearing room day after day. This document by itself suggests the complexity of the issues, and is evidence as well of the great lengths we had to go to in order to present all of the contradictions and unanswered questions in coherent form.

This report is available to all of the Senators, and I hope that they will read

it, despite its length—or at least read the summary version, which is only 23 pages long. But I would like to note for the record some 29 questions which to my mind have been left up in the air despite the hearings—29 questions which to my mind bear directly upon the nomination of Mr. Kleindienst, relating to the issues raised by the ITT affair and relating to Mr. Kleindienst's legal responsibility in that matter. It is a lengthy recitation but I believe it is worth putting before the Senate, so that it cannot be said that this record is free from doubts or suspicions. Any reasonable man who reads this record could come to no conclusion other than this: that there was something that was not right about the ITT antitrust settlement. Now, perhaps we may all be wrong—frankly I hope that we are, and I would be the first to admit it if it could be proven—but on the present state of the record, it would require a good deal more investigation before we could be sure that we were wrong in our conclusion. And that is all that we are asking, that the Senate not rush to judgment on this matter until these questions have been laid to rest.

The members of the Judiciary Committee as has been stated earlier, had a lengthy opportunity to cross-examine and examine some of the witnesses. However, they were denied access to some of the others. Some questions that were asked were not answered. However, at least we were there. The other 80-odd Members of the Senate did not have this opportunity. It is for that reason that I go into a degree of particularity in order to spread on the whole record the concerns evidenced by one member of the Judiciary Committee.

These concerns resulted from a careful review of the entire record, and although each Member of the Senate must determine for himself the wisdom of the concerns raised by the Senator from Indiana I hope that my colleagues will go through the necessary effort to make this determination for themselves.

Now, let me lay out what I think of the unanswered questions regarding the ITT affair.

The first unanswered question is whether the ITT settlement was "handled and negotiated exclusively" by the antitrust division. Handled and negotiated exclusively are the words Mr. Kleindienst used in a letter on the subject he wrote on December 13, 1971. He said in that letter,

> The settlement between the Department of Justice and ITT was handled and negotiated exclusively by Assistant Attorney General Richard W. McLaren.

But the record repeatedly belies that allegation. In the finest place, Mr. Kleindienst met with John Ryan, deputy director of ITT's Washington office, at a social gathering, and agreed to hear personally an argument by ITT's officers that economic hardships would result from divesting Hartford.

In the second place, an attorney representing ITT, Lawrence Walsh, phoned and wrote Mr. Kleindienst asking at the 11th hour for a delay in filing of the Government appeal in the Grinell case, explaining that:

> Ordinarily I would have first seen Dick McLaren, but I understand that you, as Acting Attorney General have already been consulted with respect to the ITT problem.

In the hearing Mr. Kleindienst, when asked the basis for Mr. Walsh's statement that he, Mr. Kleindienst already had been informed about the matter said he did not understand what Mr. Walsh was talking about. Anybody who knows Lawrence Walsh, a distinguished member of the bar knows that he usually knows what he is talking about. So this, too, is an unanswered question.

After this exchange—and three phone conversations between Mr. Kleindienst and Mr. Walsh—the Department did in fact delay its appeal.

Moreover, on April 20, 1971, Mr. Kleindienst met alone with Felix Rohatyn, the ITT director and investment banker who had masterminded ITT's acquisition policy. At this meeting—of which Mr. McLaren was unaware—Mr. Kleindienst was quite impressed with Mr. Rohatyn's statement of the economics dangers of the Hartford divestiture. Following this meeting, Mr. Rohatyn testified that—

> Mr. Kleindienst directed that a full presentation be made to Mr. McLaren at a larger meeting on April 29.

Mr. Rohatyn met with Kleindienst three more times before the final settlement was announced—always with no others present. And at the crucial juncture in the negotiations, when the Department decided to propose a settlement to ITT on June 17, 1971, Mr. Kleindienst and Judge McLaren together called Rohatyn from Mr. Kleindienst's office to inform him of the terms.

Finally, Mr. Rohatyn himself initially told Jack Anderson that he had "handled some of the negotiations" with Mr. Kleindienst and Judge McLaren. Mr. Kleindienst himself agreed that his personal role—and I quote from the response to the question I asked him—

> Resulted in the Government . . . moving from a position of prosecution to one of negotiation.

And he volunteered that he—

> Set in motion a series of events by which Judge McLaren became persuaded that . . . he ought to come off his position with respect to a divestiture of Hartford by ITT.

In view of all this evidence, is the Senate prepared to believe that Mr. Kleindienst is accurate when he maintains, as he does to this day, that Judge McLaren "handled and negotiated" the settlement "exclusively?"

The second unanswered question is whether the Justice Department was justified in settling the ITT case because of the "financial hardship" to ITT shareholders. Remember, Mr. Kleindienst legally bears the full responsibility for the decision to settle the case. Yet his explanation for the decision he made is hardly convincing—certainly not convincing enough to remove the cloud of doubt that hangs over his head.

The Justice Department, we were told, altered its position on the necessity of divesting Hartford Fire primarily because of the devastating financial loss which would come to the ITT shareholders from such a divestiture.

Judge McLaren testified that the "real reason for the decision was the devastating financial consequences" to the ITT shareholders and its possible consequence on the stock market. The official Department memorandum—by which Mr. Kleindienst authorized the Antitrust Division to proceed with a settlement which did not include the divestiture of Hartford—gave as its primary reason for altering established departmental policy in these cases "the projected adverse effects on ITT and its stockholders. Indeed, as Richard Ramsden told the committee this was the only substantial finding of his report, which the Justice Department relied on so heavily.

However, neither Mr. Kleindienst nor anyone else, was ever able to explain why the adverse effects on the shareholders suddenly justified a change in strategy. As Judge McLaren told the committee, the financial effect on the shareholders could not have been any surprise to him. He stated:

> Well, at the time we filed the Hartford case . . . we could foresee that if we were successful, this was going to have a massive financial effect. And yet, I did not feel that we had any right to back away from pursuing the case.

Thus it is hard to believe that Judge McLaren really relied on the financial effect—the financial loss—to the shareholders as the basis for his about-face. He told the committee he had known about that since filing the suits in the first place. And, equally important, loss to shareholders was a legally irrelevant factor under well settled antitrust precedents. *United States* v. *DuPont & Co.*, 366 U.S. 316 (1961). Again I quote Judge McLaren:

> And, in fact, there is a Supreme Court decision right on the point in General Motors-DuPont, where the Supreme Court says that if the parties put themselves in this kind of a position that it is not a legal reason to forgive the violation of Section 7.

If financial loss to shareholders is not a legal reason for refusing divestiture, what reason did Mr. Kleindienst have for settling the case as he did?

This leads to a third unanswered question: Was the Justice Department justified in settling the ITT case because of some impact on the stock market or a "ripple effect" on the economy? Mr. Kleindienst cited the effect of divestiture of Hartford on the stock market and the economy when he formally approved the final decision to go ahead with a settlement of the ITT cases which did not involve Hartford Fire. But nowhere in the record is there any substantial, independent analysis of these supposedly critical issues.

There was a great deal of reliance in the hearings on the Ramsden report, that the Ramsden report was the foundation for the belief there would be a tremendous effect on the economy, a ripple effect on our economy, a loss in our balance of payments.

Mr. Richard Ramsden—the financial analyst whose report was relied upon heavily by the Justice Department in explaining its decision—told the committee that his report simply was not intended to—and did not—deal with any ripple effect the divestiture might have on

the economy. In fact, when he was asked at the hearings to make such an analysis, Mr. Ramsden told the committee:

I would question very severely whether there would be any significant ripple effect.

Prof. Irwin Friend, Richard K. Mellon professor of finance at the Wharton School of Finance and Commerce, University of Pennsylvania, made another independent analysis and concluded that there were no "plausible reasons" to expect serious repercussions on the stock market or economy because of the divestiture.

Just why there was such concern over the drop in market value of ITT stock after a divestiture of Hartford was not clear. Mr. Ramsden told the committee that the stock market is so large today that the value—to give but one example, of IBM stock alone could fluctuate $1 billion in the course of a normal business day. Estimates of the loss to ITT shareholders were approximately the same; there was no reason to expect any extraordinary results on the market from such a change in share value. In addition, the market had survived the impact of the DuPont divestiture of General Motors—an impact twice as large on a stock market half the size at the particular time in question.

And Judge McLaren specifically testified that no other information from an independent source was obtained by the Department that would have justified these fears that there would be a devastating effect on the economy if Hartford Fire were divested. Judge McLaren said that other than ITT documents and the Ramsden report:

I do not think there was anything further in writing.

Indeed, the Department's official memorandum outlining and approving the decision indicates that there was never much more than guessing to support these assertions. After outlining the consequences for ITT shareholders of a forced divestiture of Hartford Fire, the memo went on:

Such being the case, I gather that we must also anticipate that the impact on ITT would have a ripple effect—in the stock market and in the economy.

Now what kind of basis is this for the settlement? None, I submit. And that leads me to the fourth unanswered question: Was the Justice Department justified in settling the ITT cases without requiring divestiture of Hartford Fire because of balance of payments problems?

One of the main arguments advanced by the Justice Department for not requiring the divestiture of Hartford Fire was the potential effect on the international balance of payments problem. The extent of this danger to the national economy could at best be described as debatable. The Ramsden report stated:

Hartford is obviously not a major direct factor in ITT's overall favorable balance of payments posture. Hartford's impact is indirect in terms of the balance sheet strength it adds to ITT.

Prof. Irwin Friend of the Wharton School, who did a separate analysis, as I mentioned a moment ago, of this issue during the hearings, concluded that the argument:

That divestiture of Hartford would adversely affect the United States balance of payments . . . is tenuous and in any case not of any moment because of the magnitude involved.

It is interesting to note that although Mr. Kleindienst relied heavily on the balance-of-payments arguments, as the hearings wore on less emphasis was placed on this aspect. For example, on the first day of the hearings Mr. McLaren assured the committee that his outside "experts reported that there was substantial support" for ITT's arguments. Later, on the fifth day of the hearings, Mr. McLaren was asked to be more specific about the balance-of-payments argument. When prodded by Senator HART, Mr. McLaren admitted there had been no real analysis of the basic issue:

No, I would not say we had any such analysis by way of proof in that manner, nor any real qualification of how expensively it would be true.

Despite this lack of proof Mr. McLaren said he and his associates felt the argument "would be true to some degree," even though he did not know "exactly" the source of his own "feeling that there would be danger."

Finally, I am compelled to ask: Was the settlement justified by the possible immediate impact on the stock market of divestiture of Hartford by ITT? This question is the fifth unanswered question.

A key argument made by ITT to the Justice Department in support of its position that a divestiture of Hartford should not be required was that such a divestiture, and the resulting loss of market value in ITT stock, could have a serious and negative impact upon the Nation's securities markets at a time of great weakness and lack of investor confidence. This argument was presented by Felix Rohatyn to Richard Kliendienst on April 20, 1971, and had special weight, for, in Mr. Rohatyn's works, "as chairman of the New York Stock Exchange Surveillance Committee during that period of financial crisis, I was concerned that so massive a divestiture might unsettle our securities markets, and with possible impact on some financial organization." Mr. Kleindienst, who testified that he was "quite impressed by the assertions made by Mr. Rohatyn" stated that Rohatyn had "terminated his remarks by saying also if they accrued—these consequences to ITT—taking into account the condition of the economy at that time, that it might have additional repercussions so far as the general stock market was concerned."

This argument was being made at a particularly sensitive period for the stock market, with a sharply declining market, and numerous brokerage houses going out of business, with possible serious losses to investors. When Mr. Kleindienst was asked if he was aware of the "rather extraordinary" efforts that were being made by the administration in that period to stabilize market conditions, he replied that he was generally aware of the problems in the market, and the administration's efforts.

But it was wholly unreasonable and unwarranted to fear that a divestiture of Hartford would result in such a massive loss in ITT stock values as to create a panic on Wall Street at a very vulnerable moment. Richard Ramsden, the financial expert called in by Judge McLaren to analyze the financial implications of the divestiture, testified that in his opinion, there would be no such impact on the securities markets. As he stated:

The stock markets of the United States have roughly $1 trillion in security values in any given day, there can be—total value of IBM alone can fluctuate as much a $1 billion—so in my judgment it would be unlikely that the kind of diminution in value that I outline in my report would have a significant ripple effect in the security market.

Moreover, the stock market investors had known of the Government's suit against ITT for almost 2 years, and its stock's price already reflected the possibility that Hartford would have to be divested.

Finally, it was equally unreasonable for Mr. Kleindienst to base a decision to settle the ITT case on the assumption that the impact on the stock market, even if large, would have occurred during the current period of crisis. For the market would react to divestiture only when it was finally ordered. And since both the Government and ITT had sworn to fight the matter through the courts, a final divestiture order was at least 3 years away. Surely no one expected the temporary crisis in the security markets could last that long.

Thus all the reasons given by Mr. Kleindienst for the settlement are, upon analysis, unconvincing at best and *ex post facto* rationalizations at worst. If Mr. Kleindienst really did base his decision on the reasons I have just discussed, one must question his judgment. If, on the other hand, there were other reasons for the settlement, the Senate is entitled to know them so that the cloud over Mr. Kleindienst can be cleared away.

Let me now move to another area where there are unanswered questions about Mr. Kleindienst's role in the ITT case. This is the sixth unanswered question now, Mr. President. Did Mr. Kleindienst fulfill his responsibilities as Attorney General in the ITT case?

As Acting Attorney General in the ITT cases, it was Richard Kleindienst's personal responsibility to make the major decisions of prosecution and settlement. Mr. Kleindienst testified that he was not an antitrust lawyer and there relied fully and exclusively on Mr. McLaren's advice in deciding whether or not to accept the proposed settlement of the ITT cases. His final decision to support the settlement decision proposed by Mr. McLaren was made on the basis of a memorandum from Mr. McLaren to Mr. Kleindienst dated June 17, 1971. But as Mr. Kleindienst told the committee:

I do not have any present recollection of having read it.

It was clear, however, that it was not the contents of the memo but the recommendation from Judge McLaren which made the difference—

That is the only reason why I went along with (the decision). He recommended it.

Furthermore—

I have never tried to substantiate a recommendation or opinion of Judge McLaren from any other source.

He never even read the Ramsden report:

I have never seen it, never read it, never had it in my hand, have no interest in it, and since these hearings I have not bothered to read it.

In short, therefore, Mr. Kleindienst told the committee that he all but delegated the decisions in the ITT cases to Judge McLaren.

If this is so, Mr. President, then perhaps Mr. Kleindienst is not morally responsible for the settlement—but if it is so, did he perform his legal duties fully?

Mr. Kleindienst's testimony in this connection leaves a seventh question unanswered: Why did he play a significantly different role in the ITT case than in the Warner-Lambert case? In Warner-Lambert, Mr. Kleindienst overruled Mr. McLaren, who had suggested that he block the upcoming merger of Parke Davis and Warner-Lambert. Mr. Kleindienst insisted strongly that the relationship between the President and Elmer Bobst, the honorary chairman of the Warner-Lambert Board of Directors, had nothing to do with his decision in the case, even though Bobst had told reporters that he spoke to people in the White House about the proposed Government suit. Mr. Kleindienst said politics was not involved in the decision not to allow the Antitrust Division to go ahead and try to block the merger. Instead he reversed Judge McLaren because the Antitrust Division had allowed only 6 days for a decision to be made on a case which did not come exactly within the Department's published guidelines; and because he had relied upon a misstatement of fact which he received from Parke-Davis officials whom he consulted with about the case. Mr. Kleindienst also said that in his view—

There wouldn't have been a significant impact on competition had the merger come about.

He insisted that these grounds—including the highly technical assessment of the impact on competition—were adequate for him—an admitted novice in antitrust law—to overrule Mr. McLaren, the consumate expert in antitrust law on whom he relied entirely during the ITT case. Why, then, the pro forma approval in the ITT case?

Mr. President, I have pointed out before that Mr. Kleindienst is legally responsible for the decision to settle the ITT case without requiring divestiture of Hartford. There are a whole series of questions left unanswered concerning the way the settlement was handled within the Department. One of these—and this is the eighth unanswered question, Mr. President—is why the Justice Department felt it necessary to go outside the Government to a private broker to obtain a financial analysis of the proposed divestiture?

Neither Mr. Kleindienst nor anyone else answered this question satisfactorily. Judge McLaren said that he had to go outside because the analysis could not have been handled in the Antitrust Division:

We do not have in the Antitrust Division an expert financial man, and we used this fellow that wrote the report that you have.

He said that the Division generally relied on outside analysts and the Treasury Department to do the necessary work of this kind.

In this case the Justice Department did ask for help from Treasury, but they did not get anything that even remotely resembled a careful analysis. Their "report" was a telephone call from Mr. Bruce MacLaury to Judge McLaren indicating that, because he was switching jobs and leaving Washington, he had not made a close study, but he generally found "nothing wrong with the ITT presentation." The Treasury Department has since issued a statement emphasizing that this had been an oral, informal report, made on "the basis of information provided by ITT." In short there was never even an attempt to verify the data assembled by ITT.

It seems strange that the Justice Department would choose to turn to an outside analyst under these circumstances. It was pointed out that the Antitrust Division turned to Mr. Ramsden because they had used his services previously on the LTV case. However, this ignores the fact that when he performed the first analysis Ramsden was in the employ of the Government, and that when he was asked to do the ITT analysis he had returned to private life and was a partner in Brokaw, Schenen, Clancy & Co., which manages investment portfolios of individuals and institutions.

Was there no one in Government who could do as competent a job? Neither Mr. Kleindienst nor anyone else ever gave an adequate explanation of why the Justice Department did not ask the Treasury Department, with its vast resources, to do a more thorough analysis. At least Treasury could have been asked to make the study on the basis of their own data—instead of relying on ITT presentations like the one given to Richard Ramsden.

Another related unanswered question, the ninth, is why did not the Justice Department under Mr. Kleindienst get the independent financial analysis, if needed, by itself, instead of going through the White House?

Judge McLaren originally testified that he got the independent financial analysis in the ITT case from Richard Ramsden, the same man who provided him with similar analysis in the LTV case when he was a White House fellow. "I asked him to do this job." On March 7, the fourth day of hearings, Judge McLaren testified that while he had had no independent recollection, it then appeared to him that he had not dealt with Ramsden himself, but that he had requested Mr. Peter Flanigan at the White House to do so.

Although Judge McLaren described Mr. Flanigan as a mere conduit, it is interesting to note how much Judge McLaren divorced himself from the obtaining of the Ramsden report, and left all the details up to Mr. Flanigan. Mr. Ramsden testified that in the ITT case he had no contact with Judge McLaren. All his instructions came from Mr. Flanigan this time. In the LTV case he had been involved directly with Judge McLaren and received information, materials, and instruction from Judge McLaren.

In the ITT case he received no materials or instructions from McLaren. He did receive an ITT economic memorandum—described by Ramsden as "basically unsubstantiated opinions so far as I was concerned"—which Mr. Flanigan passed on to him. Mr. Flanigan testified that he acted merely as a conduit for Mr. Ramsden's report and that he had dealt with Mr. Ramsden only because Judge McLaren did not know how to contact Mr. Ramsden. His only reason for getting into the case was his desire to help out "another overworked public servant."

Continuing on this same theme, Mr. President, I am forced to ask another unanswered question, the 10th. Might the conclusions of the independent financial analysis have been improperly influenced?

In order to assist Mr. Ramsden in his analysis of the probable effects of a Hartford divestiture, Mr. Flanigan gave him only one document—an ITT document entitled "The Economic Consequences of Divestiture of Hartford by ITT." Mr. Ramsden described this document as an advocate's brief which laid out ITT's argument as to the disastrous economic effects of a divestiture:

It was in no way based on any facts; it was in no way based on any analysis of the data.

Mr. Ramsden testified that this document was to assist him in focusing upon the object of the analysis he was to perform. Although Mr. Flanigan did give the ITT brief, Mr. Ramsden was not provided with any arguments or documents supporting divestiture.

Another factor has to be taken into account. At the time he made his analysis, Mr. Ramsden's investment banking firm was managing two portfolios holding approximately $200,000 of ITT stock. No one who knew this thought this was important. Mr. Ramsden considered this insignificant but informed Mr. Flanigan, who agreed that there was no conflict. Mr. Flanigan does not seem to have informed Judge McLaren of the holdings but Mr. McLaren testified that it would have made no difference to him even if he had known. Judge McLaren refused to say whether the ITT stock managed by Mr. Ramsden's firm would have been worth less if Mr. Ramsden's report had been in favor of diverstiture. But ITT's whole presentation was based on this assumption.

Mr. Flanigan, it should be remembered, testified that when he was Vice President of Dillon-Read had acted as investment bankers for a company—Canteen—when it merged with ITT.

In view of all this, can we say that the decision Mr. Kleindienst made to settle the lawsuit was in the public interest? I do not think we can be sure of that on the record before the Senate.

Moreover, it is not clear whether ITT was attempting to influence the outcome of the antitrust case through Peter Flanigan of the White House staff. This, Mr. President, is the 11th unanswered question.

When Peter Flanigan testified before the Judiciary Committee he refused to answer any questions dealing with his contacts with ITT officials. However, in

response to written interrogatories from the committee, Mr. Flanigan acknowledged that he had met with Felix Rohatyn, ITT director, on June 29, 1971, the same day that Mr. Rohatyn was meeting with Richard Kleindienst. Mr. Flanigan stated in his answer that this meeting was "one of a series of meetings" with Mr. Rohatyn "in his capacity as chairman of the Surveillance Committee of the New York Stock Exchange." However, Mr. Rohatyn had already resigned as chairman of the Surveillance Committee more than 3 weeks before meeting with Mr. Flanigan, and his resignation had been the subject of a large news story in the New York Times on June 21. In fact, he was not even a member of the Surveillance Committee—let alone the chairman of the committee—when he met with Mr. Flanigan on June 29. At this meeting with Mr. Flanigan, Mr. Rohatyn brought up the settlement terms of the ITT antitrust suits and complained to Mr. Flanigan that the terms were "unacceptable to the company." Mr. Flanigan states in his letter to the committee that he told Mr. Rohatyn to take it up with Judge McLaren. He also stated that he spoke to Mr. Kleindienst and informed him of Mr. Rohatyn's visit and his complaint.

This, Mr. President, brings us to another unanswered question, the 12th, and one of the most important of all. This whole inquiry has been made to determine if any illegitimate influences were brought to bear when Mr. Kleindienst agreed to settle the ITT antitrust suit on terms agreeable to the company—namely, no divestiture of Hartford. It is therefore appropriate to ask, Mr. President, whether Mr. Kleindienst ever talked to anyone at the White House about the ITT case? Unfortunately, this simple question is also not answered by the record.

Mr. Kleindienst testified:

> You asked me did I discuss the ITT matter with the White House. I do not recollect doing so.

Much later, after Peter Flanigan's role in the case had been fully revealed, he admitted that he knew that Mr. McLaren had used White House aide Peter Flanigan to get the Ramsden Report. However, later that same day he said that he only knew about Mr. Flanigan's involvement from the testimony Mr. McLaren had given to the committee earlier. About his possible dealings he was quick to add:

> I had no conversation with Mr. Flanigan, though.

Peter Flanigan's recollection is somewhat different. He told the committee that he telephoned Mr. Kleindienst to tell him the Ramsden Report was ready and that Kleindienst told him to hold the report until Judge McLaren's return. He also indicated that Mr. Kleindienst was with Judge McLaren when Mr. Flanigan personally delivered the report. On both counts Mr. Kleindienst's recollection is hazy. As to the telephone call:

> I can't ever recall that it occurred, but it is extremely—well, I guess it did occur because Mr. Flanigan remembers that it occurred.

As to the meeting:

> It is the kind of thing I wouldn't recollect. I can't recollect the dozen people I saw three days ago.

So we do not know the extent of the conversations between Mr. Flanigan, the President's ambassador to big business, and Mr. Kleindienst, who reached an agreement with ITT. Nor do we know, Mr. President, whether the White House exerted pressure on John Mitchell to settle the ITT case. This is the 13th unanswered question.

Mr. Mitchell, then Attorney General and now running the campaign to reelect the President, had, we were told, disqualified himself from the ITT case. But Brit Hume testified that Mrs. Beard told him she had pressed the ITT case upon the Attorney General, and that Mr. Mitchell began "to berate her angrily" for ITT's lobbying so vigorously against the lawsuit over the past year and that "the White House, even the President had called him," urging him to "make a reasonable settlement." While Mr. Mitchell denied having said this, the allegation appears to be corroborated indirectly by the evidence showing massive and persistent lobbying of the executive branch by ITT. Moreover, it seems to be directly corroborated by Governor Nunn's testimony that the Attorney General was "right vehement" in telling Mrs. Beard that he "did not like the pressures that had been brought."

This leads, Mr. President, to the 14th unanswered question: Did ITT order Mrs. Beard to discuss its antitrust problem with the Attorney General?

When Mrs. Beard found she was likely to run into the Attorney General at a party following the Kentucky Derby, she informed her bosses, Mr. Merriam and Mr. Gerrity of ITT. In an interview with Mike Wallace on April 2, 1972, she said that they told her to ask about the ITT-Hartford case "if the occasion arose, if there is a possibility." However, Mr. Merriam testified that he had "never given her any instructions * * * to discuss anything about the antitrust matter with Mr. Mitchell anywhere." And Mr. Gerrity testified that he had actually "told her just not to talk to the Attorney General about our antitrust matters." As is all too common in this inquiry, we do not know what really happened.

Another unanswered question, the 15th is: Did Dita Beard and John Mitchell discuss settlement terms for the ITT case when they met in Lexington, Ky., on May 1, 1971?

It is well-established that Mrs. Beard and Attorney General Mitchell met and discussed the ITT case during a buffet following the Kentucky Derby on May 1, 1971, at Governor Nunn's mansion. Britt Hume testified that Mrs. Beard told him she had pressed the ITT case upon the Attorney General, and that Mr. Mitchell began "to berate her angrily" for lobbying vigorously against the lawsuit over the past year. Hume testified that Mrs. Beard said that after the Attorney General's "angry lecture" to her, they proceeded to discuss the details of an antitrust settlement, finally reaching a "kind of politician's agreement" that ITT could acquire Hartford if it would divest itself of Canteen and part of Grinnel. When she testified in Denver, however, she denied discussing "terms" with the Attorney General, but confirmed her effort to press the subject with him on three or four occasions during the dinner. She said that the Attorney General "got mad and said plenty, which I deserved"—a statement directly contrary to her later interview with Mike Wallace, in which she said "Mr. Mitchell was most charming." This testimony conflicted with the Attorney General's original account of having no more than a "hello and goodbye" conversation with Mrs. Beard. But when the Attorney General testified in person, after Mr. Hume, he confirmed two or three separate encounters with Mrs. Beard during the dinner, although he insisted that he reproached her for approaching him and refused to discuss settlement terms.

Sixteenth, Mr. President, we do not know the answer to this question: If John Mitchell really disqualified himself in the ITT case because of a conflict of interest, why did he meet with ITT President Harold Geneen on August 4, 1970?

Attorney General John Mitchell testified that he disqualified himself from participation in all ITT cases because his former law firm had done legal work for ITT. However, on August 4, 1970, he met alone in his office with ITT President Harold Geneen for 35 minutes "to discuss the overall antitrust policy of the department with respect to conglomerates". Geneen also alleged that their conversation was confined to "general antitrust policy." But at the time of this meeting on general antitrust questions with respect to conglomerates, the Justice Department had only four lawsuits pending against conglomerate mergers—and three of the four involved ITT acquisitions. And Mr. Gerrity, ITT's senior vice president and director of public relations, testified that the purpose of Geneen's meeting with Mitchell was to see if we could move the Justice Department toward some sort of a reasonable attitude toward our positions—on a settlement, I guess—involving our antitrust suits.

The allegations concerning Mr. Mitchell's involvement in the settlement of the ITT affair stem, as indeed did the impetus for investigating the case, from a memorandum written by Mrs. Dita Beard, Washington lobbyist for ITT, and released to the public by Mr. Jack Anderson. Mrs. Beard now claims that she did not write the memorandum Mr. Anderson published. This, Mr. President leads to the 17th unanswered question: Can we believe Dita Beard's denials that she wrote the memorandum Jack Anderson presented to the committee?

Only very late in the investigation of the ITT affair did Mrs. Beard begin to deny in public that she wrote the memorandum. For a month before March 17, Mrs. Beard consistently admitted she wrote it, except, it is claimed, in a single conversation with Congressman Bob Wilson. Let me run through a chronology of the relevent events.

On February 23, 1972, Mr. Britt Hume showed the memorandum to Mrs. Beard

and he later testified that "she did acknowledge this was authentic." Then on February 24, 1972, Mr. Tagliareni, ITT security man, told Mr. Merriam, ITT Washington office that he had spoken to Mrs. Beard and that she told him that she had prepared the memorandum and delivered it to Mr. Merriam. Later that same evening, Britt Hume again met with Mrs. Beard. Hume later testified that she said:

I wrote this memo. You know I wrote this memo. There is no use trying to pretend otherwise.

On February 29, 1972, Mrs. Beard spoke to Dr. Liczka, her physician, and did not deny the memo. It was the doctor's impression that she accepted it that was her memo. Between February 29 and March 1, 1972, Mrs. Beard, having been ordered to New York by Mr. Gerrity, an ITT vice president, spent a day and a half with him and other ITT officials. During this time, according to Mr. Gerrity's testimony, she did not deny having written the memorandum.

February 29, 1972, of course, was the day that Jack Anderson's column appeared. The column stated:

Mrs. Beard acknowledged its (the memo's) authenticity.

On March 1, or March 2, 1972, according to later testimony by Congressman BOB WILSON, Mrs. Beard called him after her meeting with ITT officials in New York and said she did not write the memorandum. But on March 3, 1972, Congressman WILSON was interviewed by Robert Cox about the memorandum. He did not tell Cox that Mrs. Beard had denied that she wrote it. Mr. WILSON did tell Cox that:

She (Dita Beard) just went rambling on in the memorandum.

And that Mr. Merriam had instructed Mrs. Beard to write a memorandum on the ITT-San Diego Convention financing arrangements. There has been no satisfactory explanation why Congressman WILSON did not tell Cox what he claims Mrs. Beard told him.

Then, on March 17, 1972, Dita Beard from her hospital room in Denver, called the memorandum a "forgery" and a "hoax". In response to this, on March 23, 1972, Brit Hume took a polygraph test. He was asked whether Mrs. Beard had explicitly confirmed that she had written the memo. He answered "yes". The examiner concluded that Hume answered the questions "truthfully." Finally, on March 26, 1972, Dita Beard testified before a special subcommittee in the Denver hospital. She said:

I did not write, compose or dictate the entirety of the memorandum which Mr. Hume presented to me in the Washington office of ITT last month. I do recall similar language in the first part of that memorandum which I wrote at sometime last June or early July of 1971, at the request of Mr. Merriam.

She also said:

I now state categorically to this committee that I did not write the Anderson memorandum.

Mr. President, whom can we believe? What are the facts? I do not pretend to have the answers; I just have unanswered questions.

Let me continue on the general topic of the Beard memorandum. When, Mr. President, was the Beard memorandum written? This is the 18th unanswered question.

The FBI examined the Anderson memorandum and concluded that there was no evidence that it was prepared at any other time than around June 25, 1971, and that there was evidence to suggest that it may have been prepared around June 25, 1971. The ITT document experts, Pearl Tytell and Walter McCrone, both concluded that the Anderson memorandum probably was not typed at the time it was dated, June 25, 1971, but rather at some date in 1972. Subsequent to the ITT document analysis the FBI performed additional tests and concluded that the results of the further FBI test were "consistent with and—do not change in any manner" the earlier FBI results. ITT's document experts were paid approximately $15,000 for their services by ITT.

On this record, is anyone prepared to answer the question I posed? I doubt it. Nor, I submit, is the answer to this question, the 19th, to be found in the record: Did ITT order Dita Beard to deny that she wrote the memorandum?

Mrs. Beard testified that Gerrity ordered her to meet with Brit Hume and explain the memorandum, though she did not want to do so. According to Hume, when they did meet, Mrs. Beard said that:

They wanted me to tell you that I made this up.

But according to Hume, Mrs. Beard said she would do no such thing. Indeed, Mrs. Beard said, according to Hume:

I wrote this memo. You know I wrote this memo. There is no use trying to pretend otherwise.

Gerrity testified that he did not order Mrs. Beard to speak to Hume, but that she had requested permission to do so. Gerrity also said he did not tell Mrs. Beard to deny that she wrote the memo.

ITT stands accused of bringing improper pressure on the decisionmakers in the administration. They and Mr. Kleindienst both claim there was no undue influence. One must wonder, then, Mr. President, why ITT shredded documents in its Washington office after it learned of the Anderson column. This is the 20th unanswered question.

ITT's Washington office, the day after Hume produced the memorandum, began to destroy documents. A preliminary report by a team of lawyers hired by ITT to investigate the shredding indicated that "many sacks of papers," a "substantial" volume, were destroyed. However, John Ryan, deputy director of ITT's Washington office, testified that in his opinion "the shredding thing has been grossly exaggerated." Mr. Merriam issued the order to destroy any corporate records which might "embarrass the company." Asked why, he replied that:

There might have been a lot of others in there like the one which Jack Anderson published on February 29.

As Mr. Merriam put it in his testimony "you would be surprised" at the number of memos he sees every week which refer to matters like that in the Beard memorandum Jack Anderson released.

Apparently, ITT was willing to accept the Beard memorandum at face value—with its allegations of corruption—and decided to be certain that other "embarrassing" documents were not uncovered.

But I am not now concerned with other arrangements. I question only the reasons for settling the ITT antitrust cases. Thus, I have another unanswered question, the 21st: Did ITT shred documents concerning the antitrust settlement or the San Diego convention?

ITT has consistently claimed that "there was nothing that related to either" the antitrust settlement or the San Diego convention in the documents that were shredded. If this is true, where is the memorandum which Mrs. Beard claims to have written—a memorandum which, by her own statement, discusses ITT's $400,000 commitment to the convention, and Mitchell's knowledge of it. No one has ever produced this memorandum, which is the most important document Mrs. Beard admits writing. If it was not shredded, where is it? If it was shredded, why?

This leads to another, crucial unanswered question, Mr. President; the 22d: Did Dita Beard write another—still missing—memorandum concerning ITT and the financing of the Republican convention in San Diego?

Mrs. Beard now denies writing the memorandum which Mr. Anderson presented to the committee as prepared by her. She claims that she wrote another memorandum—one that contains the substance of the first three paragraphs of the memorandum Mr. Anderson presented. No one has ever found this memorandum. The only relevant document which ITT has produced is a memorandum dated June 25, 1971, from Mrs. Beard to Mr. Merriam concerning the way she was spending her time. Mrs. Beard confirmed this "job description" memorandum as her own.

The unfound memorandum which Mrs. Beard claims to have written at Mr. Merriam's request—if it really was written—would confirm that the ITT commitment was $400,000 for the San Diego convention, that the participation of ITT was to be kept secret, and that high-ranking administration officials—John Mitchell, Bob Haldeman, and Mr. Nixon are named in the memorandum, it is said—knew about the ITT contribution.

The unfound memorandum was, Mrs. Beard says, written at Mr. Merriam's request. Susan Lichtman, Mrs. Beard's secretary at the time, stated that: "She did not recall typing a memorandum dealing with the San Diego convention which contained parts of the first three paragraphs of the memorandum Mr. Anderson presented. But Mr. Merriam testified that he did not ask Mrs. Beard to put anything in writing about ITT-Republican Convention financing, and testified that he never received anything from Mrs. Beard on this topic. Yet Congressman BOB WILSON testified that:

Mr. Merriam told me he had seen such a memo (like the one Mr. Anderson presented) and thought he gave it back to Dita.

ITT claims that it did not shred any documents "related to either" the antitrust settlement or the San Diego convention. If that is so, where is the memorandum Mrs. Beard claims to have written?

And where, Mr. President, is the truth? Where is the answer to this question Mr. President, the 23d unanswered question: Can we rely on the testimony of Mrs. Beard's physicians when one of them—and the wife of the other—are currently under investigation for medicare fraud?

Dr. Liczka had been under investigation for medicare fraud, and the U.S. attorney involved had decided not to prosecute him less than 2 weeks before he testified. But an investigation of Dr. Liczka's wife for medicare fraud was continuing at the time he testified. Indeed, a Federal grand jury was scheduled "to consider the evidence against Dr. Liczka's wife to determine whether an indictment is warranted" during the week of March 13, 1972. At the time of Mrs. Beard's testimony, Dr. Radetsky, Mrs. Beard's osteopathic physician in Denver, was also under investigation for medicare fraud.

Even more important is this question, the 24th, because it directly calls into question the judgment of Mr. Kleindienst and those who will work with him if he is confirmed: Why did not the Justice Department inform the Judiciary Committee of the legal problems of Mrs. Beard's two physicians before the Judiciary Committee relied on their views?

Dr. Liczka spoke in person with representatives of the Justice Department twice before he testified—once 3 days before the committee hearing at which he stated that Mrs. Beard was "disturbed and irrational" and once again the night before that hearing. Mr. Kleindienst originally stated to the press that he was aware of Dr. Liczka's legal problem before Dr. Liczka testified. However, when asked, Kleindienst testified that he did not know about Dr. Liczka's legal problems until after Dr. Liczka testified.

Dr. Radetsky—whose medical opinion it was that kept the committee from questioning Mrs. Beard after her collapse in Denver—had been under investigation for medicare fraud by the U.S. attorney's office. Henry Peterson, Assistant Attorney General in charge of criminal division, testified that no one in the Justice Department had been aware of the investigation until after Mrs. Beard had been interviewed by the special subcommittee. Senator KENNEDY has produced statements indicating that Patrick Gray, Deputy Attorney General, was informed by the U.S. attorney in Denver of the investigation of Dr. Radetsky.

As I said before, the impetus for the abbreviated investigation the Judiciary Committee held was Mrs. Beard's memorandum. The issues since then have gone far beyond the memorandum itself, and the case no longer stands or falls on the memorandum's complete accuracy. But Mrs. Beard is still a major figure. The Judiciary Committee only interviewed her for 2 hours, because of her health. This leads me to the 25th unanswered question: What is Dita Beard's real physical and mental condition?

It has been reported to the committee throughout these proceedings that Mrs. Beard has a serious heart condition. Dr. Liczka testified that Mrs. Beard suffered from "severe coronary heart disease." Mrs. Beard herself collapsed in her hospital bed while being interrogated by Senator GURNEY about her relationship with Mr. Kleindienst. And after that Dr. Radetsky expressed the opinion that she could not safely testify again for 6 months.

But it has since been found that Dr. Liczka and Dr. Radetsky have both recently been under investigation for medicare fraud. And two independent and leading cardiologists in Denver examined Mrs. Beard at the request of the committee and reported that a conclusion of "possible coronary artery disease" could be based only on "subjective information" such as her history of chest pain. These doctors further stated that "there was no positive objective finding from the physical examination, electrocardiogram or chest X-ray" to confirm a diagnosis of coronary disease. Then, soon after the special subcommittee hearing in the Denver hospital at which she collapsed, Mrs. Beard gave a lengthy public interview on national television.

Mrs. Beard's mental condition was called into question by Dr. Liczka, who testified that she was "irrational and disturbed." He stated that her deficient mental condition could have been the result of her heart condition, her drinking, and the pills she took. None of the persons who worked with Mrs. Beard—Mr. Geneen, Mr. Gerrity, Mr. Merriam, Mr. Ryan—or Congressman WILSON, who also knew her well, would confirm this opinion. Indeed, Mr. Geneen, president of ITT, said that in the 10 years Mrs. Beard worked for ITT:

I know she did her job well.

He testified:

I have no reason to believe she was not a good employee.

The focal point for the investigation was the allegation that the settlement of the ITT case was influenced by ITT's financial assistance to the San Diego Republican Convention—since moved to Miami. There is so much contradiction and confusion about this issue that we do not even know the answer to this question, Mr. President, the 26th: Just how much money did ITT agree to contribute to the Republican convention?

The original Beard memorandum of June 25, 1971, refers to a "call from the White House" and mentions a "400,000 commitment," and—subsequently—"the 300,000/400,000 commitment." This figure seems to be corroborated by Congressman WILSON's testimony that:

Mr. Geneen suggested that if I would take the lead he thought Sheraton would underwrite up to $300,000 and—then told me he would see that they backed me personally for half the total amount needed, which would be $400,000.

However, Mr. Geneen insists that the pledge was for only $100,000 in cash and an additional $100,000 to match other private commitments. Mrs. Beard, on the other hand, testified in Denver that Mr. Merriam of ITT told her of a White House phone call and asked "is this $600,000 going to Nixon's campaign?"

One person who, on the record, should have known the arrangements between ITT and the San Diego Republican Convention was John Mitchell. He was the President's top political adviser, his 1968 and his 1972 campaign manager. Yet when he testified, Mr. Mitchell pleaded ignorance. This is the 27th unanswered question: Can it really be, as John Mitchell testified, that as late as March 14, 1972, he did not as of this date know what arrangements, if any, exist between ITT or the Sheraton Hotel Corp. and the Republican National Committee, or between ITT or any of its subsidiaries and the city of San Diego or any agency thereof?

Although there is dispute whether the briefing took place in April, May, or September 1971, the Lieutenant Governor of California, Ed Reinecke, testified that he and his aide, Edgar Gillenwaters, had briefed John Mitchell with respect to the "progress" that was being made regarding the arrangements for the Republican National Convention in San Diego. Mr. Reinecke and Gillenwaters gave Mitchell a "complete report on the efforts to have San Diego selected as host city for the convention," according to Reinecke's testimony. Included in that "complete report" to Mitchell was a report of the financial arrangements, including ITT's financial commitments. Mr. Reinecke and Mr. Gillenwaters both testified that, in addition, they briefed John Mitchell about security arrangements being made to protect the convention.

Lieutenant Governor Reinecke also told Senator TUNNEY, in a telephone call on March 14, that unless he was "subject to a failing memory" that he had "brought up the $400,000 to be given to the city of San Diego to bring the convention to San Diego" in his conversation with Mr. Mitchell.

Mr. Reinecke and Mr. Gillenwaters told reporters from the San Diego Union, the Sacramento Bee, the Washington Star, and the Washington Post, as well as the wire services, that they had met with Mitchell and briefed him with respect to the convention arrangements, including the ITT contribution.

Brit Hume testified that Mr. Gillenwaters told him that he and Lieutenant Governor Reinecke had briefed Mr. Mitchell with respect to the convention arrangements, including ITT's contribution. Mr. Hume testified that Mr. Gillenwaters told him that Mr. Mitchell encouraged the efforts to bring the convention to San Diego.

When Senator TUNNEY pointed out to Mr. Reinecke that Mr. Mitchell would probably contradict his testimony, Mr. Reinecke replied:

Well, all a person has is his integrity.

How, then, could Mr. Mitchell not have known about the arrangements, Mr. President—how?

Closely connected to this question is the following one, No. 28. Can we believe that Reinecke and Gillenwaters

briefed John Mitchell about the "progress" of their "efforts to have San Diego selected as host city" for the Republican Convention 2 months after San Diego had already been selected as host city for the convention?

Lieutenant Governor Reinecke of California testified that he gave John Mitchell a "report" on the "progress" of the "efforts to have San Diego selected as host city for the convention," including a discussion of ITT's financial commitments, but not until September 1971. This statement conflicts with repeated earlier statements by Reinecke and his aide Edgar Gillenwaters that they had met with Mr. Mitchell in mid-May of 1971—before the antitrust settlement decision in June—to discuss their efforts to bring the convention to San Diego and the arrangements for the convention, including ITT's financial contributions. First, Lieutenant Governor Reinecke told Senator TUNNEY in a telephone conversation on March 14 that he and Mr. Gillenwaters had briefed Mr. Mitchell in May about their efforts to "bring the convention to San Diego." Second, Mr. Reinecke and Mr. Gillenwaters told reporters for the San Diego Union, the Sacramento Bee, the Washington Star, the Washington Post, and wire service reporters, that their meeting with Mr. Mitchell to discuss the convention had taken place in May. Third, Brit Hume testified that Mr. Gillenwaters told him that he and Mr. Reinecke had met with Mr. Mitchell in May to report their efforts to bring the convention to San Diego, and that Mitchell had encouraged them in their efforts at that meeting.

Within 24 hours of John Mitchell's testimony before the committee on March 14, Lieutenant Governor Reinecke's office received a telephone call, the origin of which is allegedly unknown, as Mr. Reinecke testified that the secretary who took the call did not bother to ask who was calling. The caller suggested that Mr. Reinecke's office "check your records" because John Mitchell's testimony was in conflict with Mr. Reinecke's earlier statement about the May meeting with Mr. Mitchell. Mr. Reinecke immediately issued a statement saying that he had been in error, and that the meeting with Mitchell at which the efforts to bring the convention to San Diego and the convention arrangements, including ITT's contribution, were discussed, had really been in September and not in May.

It defies logic, however, that this meeting with Mr. Mitchell—who maintained before the committee that he knew nothing at all, even today, with respect to the arrangements for the convention—should have taken place in September—treating as it did, the "progress" of efforts to "bring the convention to San Diego"—2 months after the site committee of the Republican National Convention Committee had already on July 23, selected San Diego as the site for the Republican National Convention in 1972.

The truth seems an elusive concept in this case, Mr. President.

The answer to the 29th question is equally hidden from our view: Was the amount of the ITT contribution a "normal promotional expense" as Mr. Geneen testified?

Mr. Geneen testified that ITT's San Diego contribution was a "normal promotional expense" and a "solid business expenditure." But this statement seems open to substantial challenge, regardless of whether the ITT commitment was for $600,000, $400,000—as the bulk of the evidence suggests—or $200,000, as Mr. Geneen maintains. Indeed, the largest hotel operator in the San Diego area—ITT Sheraton, even when its new hotel opens, will be only second largest—committed only 12 percent of the amount admitted by Mr. Geneen. And he told the Los Angeles Times that:

> The convention is the greatest thing that ever happened to San Diego, but that 24,000 bucks is enough.

Mr. President, there is another issue wholly apart from any of the questions raised with regard to the ITT affair—which itself raises the most serious questions with respect to Mr. Kleindienst's fitness to be Attorney General of the United States. This is the case of Robert Carson, which has not been mentioned once by my colleagues who are supporting Mr. Kleindienst. They did not raise it in their report approving his nomination, nor have any of them mentioned it in their statements here on the Senate floor. I consider the matter too important to be ignored.

Mr. President, I ask unanimous consent at this time that an editorial from the Washington Post dated the first of June, 1972, be placed in the RECORD, dealing with the precise question which I wish to discuss briefly here.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

THE KLEINDIENST NOMINATION—I

The nomination of Richard G. Kleindienst to be Attorney General of the United States finally went to the Senate floor yesterday after the longest committee hearings ever held on such an issue. The questions of fact, judgment and omission raised by the hearings are both numerous and complex. We will comment here today on only one aspect of the proceedings—an incident which the Judiciary Committee barely touched on in its examination of Mr. Kleindienst's qualifications to be Attorney General, and which involved Mr. Robert T. Carson, former administrative assistant to Sen. Hiram Fong (R-Hawaii), who was tried last year in a federal district court in New York for perjury and conspiracy to commit bribery. During Mr. Carson's trial on these charges, Mr. Kleindienst, then Deputy Attorney General, was a principal witness for the prosecution. Under the prosecutor's direct examination, he testified about a meeting between Mr. Carson and himself which had taken place in the Department of Justice.

Q. Now, would you tell the court and jury what Mr. Carson said to you and what you said to him on November 24, 1970?

A. Well, after we had exchanged pleasantries, Mr. Carson sat down in a chair in front of my desk and said that he had a friend in New York who was in trouble, and that if I could help him with respect to his trouble, his friend was a man of substantial means and would be willing to make a substantial contribution of between 50 and 100 thousand dollars to the re-election of President Nixon.

I asked him what kind of trouble this man had. Mr. Carson said he was under indictment for federal offenses, and I said that under no circumstances could I do anything about this matter, even look into it as a result of the fact that a grand jury had returned an indictment. That was about all the conversation that existed.

Mr. Kleindienst later testified as follows, under cross examination, on his report to the Attorney General about this meeting on December 1, 1970, a full week after it had occurred.

Q. And it (the report) was made, was it not, after you were informed that on that very day there was going to be an electronic surveillance in the New Senate Office Building?

A. No. It was after I had been shown a memorandum dated November 30 addressed to the Attorney General from the Director of the FBI which had reference to Mr. Carson. . . .

Q. Well, didn't you say that you had been informed or advised that there was scheduled to occur that morning an electronic surveillance?

A. I received that information.

Q. Yes.

A. That's what it was about.

Q. And it was after you received it that you wrote this memorandum?

A. Yes, sir.

Later, still under cross examination, the then Deputy Attorney General testified that he had given no thought to the $100,000 offer in the week that elapsed before he saw the FBI memorandum and made his report to the Attorney General. He also testified that during the week, he did not consider the conversation with Mr. Carson to have contained a bribe offer. Subsequently Mr. Carson was convicted of perjury and conspiracy to commit bribery.

At his confirmation hearing, Mr. Kleindienst refused to discuss the Carson case, the trial portion of which had already been concluded by the sentencing of the defendant.

It has often been said in this city that the President should be given great latitude in choosing the men who will work in the cabinet and in the great departments of government helping him to bear the enormous burdens of governing the country. There is much in this, but it cannot and should not be the Senate's sole guide for determining whether to confirm a nominee. The American people have a large stake and some very real expectations, if not rights, in the matter too. The people, it seems to us, have a right to expect that the men upon whom the President relies for advice and judgment in a wide variety of matters and to whom he delegates a substantial amount of his authority should know their business and be able to exercise good judgment in both times of tranquility and great stress.

Although government prosecutors and a jury regarded Mr. Carson's offer as an attempt at bribery, Mr. Kleindienst not only testified that he did not so regard it when he heard it, but also that he had entirely dismissed the $50,000 to $100,000 offer from his mind for a whole week. A careful reading of his testimony seems to indicate that only after he saw the FBI memo on the Carson case indicating that Mr. Carson and Senator Fong's office were to be placed under electronic surveillance, did he both reconsider his view of the offer and decide that the matter was of sufficient import to report it to the Attorney General, which he then did, post haste.

Both because this whole matter, at the very least, raises real questions about Mr. Kleindienst's judgment and his legal perspicacity, and because of the Judiciary Committee's inordinate delicacy in deferring its brief consideration of this issue to the very last day of a 24-day hearing, it seems to us that the Senate has a responsibility to the citizens of this country to examine this particular incident—among others—with the greatest care. We will have more to say later about two other incidents—one the cele-

brated ITT affair, and the other having to do with a District Attorney in San Diego—which we think bear directly upon Mr. Kleindienst's fitness to become the chief law enforcement officer of the land.

Mr. BAYH. And I would also ask unanimous consent to insert today's editorial from the New York Times, which also mentions the Carson case in discussing the Kleindienst nomination.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

THE KLEINDIENST CASE

Ideally, an Attorney General should be a lawyer, highly regarded for his professional attainments and wise, discriminating judgment. Although aware of political necessities, he ought not be a partisan in a narrow or combative sense. To the President, he should be a sagacious counselor able to take a long view in the rush of immediate events. To the public, he should be—along with the members of the Supreme Court—one of the ultimate guardians of justice.

It is sad but not historically unprecedented that Richard G. Kleindienst, whose confirmation is now under Senate debate, falls short of these high standards. At least half of the men who have headed the Justice Department in its long history have failed to meet them. Mr. Kleindienst is a lawyer of no particular distinction and a routine politician. But those facts do not preclude his confirmation inasmuch as American tradition gives a President wide latitude in choosing his Cabinet advisers.

Furthermore, it is only to be expected that Mr. Kleindienst holds regressive opinions on civil liberties and civil rights. In view of President Nixon's own law-and-order attitudes, the choice of a more liberal lawyer as successor to John N. Mitchell could not be expected.

The issue then for the Senate and the nation is whether Mr. Kleindienst falls so far below an acceptable standard of competence, political involvement and leadership quality as to override the prevailing presumption in favor of any Presidential nominee. Reluctantly, we conclude that Mr. Kleindienst does fall below this minimum standard.

His personal integrity in a financial sense is not in dispute. What is seriously doubted is the integrity of his judgment when public interest and party interest collide. There is a high risk, perhaps a probability, that if Mr. Kleindienst is confirmed and serves for any considerable time as Attorney General, he will reduce the morale and efficiency of the Justice Department to the demoralized condition which it reached twenty years ago at the end of the Truman era.

The experience of the Truman Administration is relevant and disturbing. President Truman appointed three successive Attorneys General, none of them personally corrupt but none of them professionally eminent or invulnerable to political influence. Each in turn was a shade more mediocre and, in varying ways, more political-minded than his predecessor. The result by 1953 was a flight of the competent employes and a rotting away of the spirit of those who remained.

Former Attorney General Mitchell, except in the field of municipal finance, is not professionally distinguished. He is an able man but his guidance of the Justice Department was unduly influenced by short-run political calculations. Mr. Kleindienst's professional accomplishments are less visible than those of his predecessor and his political manipulations and preoccupations even more obvious. In short, his tenure would almost certainly lead to a quickening of the downward spiral within the department. When young and middle-level career employes lose confidence in the professional capacity and freedom from political subservience of the department's leadership, the destructive attitudes of cynicism and resentment rapidly gather force.

The six weeks of Senate Judiciary Committee hearings on Mr. Kleindienst's nomination were inconclusive on many issues of fact. But they wrote a compelling indictment of the nominee as evasive, disingenuous and crass. He consistently tried to conceal the extent and nature of his involvement in the politically motivated I.T.T. settlement which undercut an important legal position that the Antitrust Division had been asserting for two and one-half years.

In the bribery case involving Robert T. Carson, administrative assistant to Senator Fong of Hawaii, the most that can be said for Mr. Kleindienst's peculiar actions is that he must be remarkably obtuse. Mr. Carson allegedly offered Mr. Kleindienst a large political contribution in exchange for quashing a criminal case, but Mr. Kleindienst did not report the matter for a week and only after learning that the F.B.I. was "bugging" Mr. Carson's office. In the Stewart case involving the flagrant obstruction of justice in a San Diego investigation of illegal political contributions Mr. Kleindienst joined in hushing up the affair.

Men can grow as Attorney General as other men grow as President. When Robert Kennedy was appointed in 1961, he seemed a person of narrow views and inadequate experience, but in almost every respect he rose to the challenge of his high office. It is possible to believe that Mr. Kleindienst would respond similarly. Yet there is little in his record to encourage that hope and much to suggest that it would be unwise to take the chance. A vote to confirm would be a vote in favor of that gamble. A vote to reject would be a vote to protect a great department of government from probable decline and demoralization. On balance, the Senate should prefer to be safe than sorry. It should tell Mr. Nixon that he can do better, that the nation deserves better than Richard Kleindienst as Attorney General.

Mr. BAYH. Mr. President, I mentioned several times during my recitation of the unanswered questions regarding the ITT settlement, that Mr. Kleindienst's judgement was called into question by certain of the decisions which he made himself, and approved on the part of others. To my mind, the Carson case, and Mr. Kleindienst's part in it, raise equally, if not more so, serious questions about his judgement.

I do not make such a statement lightly, for I recognize—as I stated earlier, the inevitable difficulties that are involved when one is considering not so much an issue but an individual. But we cannot—I will not—shirk our responsibilities.

The facts of the Carson case are laid out quite thoroughly on page 1713–1716 of the hearing record, and on page 122–128 of the minority views. Mr. Kleindienst was asked to fix a criminal case in exchange for a $100,000 political contribution to the President. He did not regard this request as a bribe offer until he discovered 1 week later—apparently quite by chance—that the man who made the offer was under FBI investigation, and was about to be placed under electronic surveillance. He did not report the offer to the Attorney General until 1 full week after it was made, again not until he became aware of the FBI investigation, nor did he give the matter even a second thought until that time.

These are the facts; they are uncontroverted, because they are drawn from the sworn testimony of Richard Kleindienst before a Federal court in New York at the trial of the man who offered him the bribe. The man was convicted, on the basis of his offer to Kleindienst, of perjury and conspiracy to commit bribery.

Now what are the questions that are raised by these facts? The first is, why did not Mr. Kleindienst think that it was a bribe offer when a man he knew came to him and offered to procure a $100,000 contribution to the President's reelection campaign if Mr. Kleindienst would fix a criminal case?

After all, Mr. Kleindienst did turn the offer down. He did tell the man that he could not do anything, because the matter had already gone past the indictment stage. So why was it that he did not recognize what seems clearly to have been a bribe for what it was? Unfortunately, Mr. Kleindienst refused to help us clarify this issue.

Another question is why he did not report the offer until he found out that Carson was under FBI investigation, including an imminent electronic surveillance. What conclusions can one draw from the facts here? That Mr. Kleindienst thought that if the FBI was investigating Mr. Carson there must have been something wrong with what Mr. Carson had done in offering Mr. Kleindienst the political contribution? Mr. Kleindienst testified that he reported to Mr. Mitchell something that he did not think was a bribe. But again, we cannot know any more—we can only speculate—because Mr. Kleindienst has refused to answer any questions about the case.

I was reluctant to get involved in pursuing this matter, because the man who was convicted of perjury and offering of the bribes had previously been the employee of one of our colleagues. I do not think anyone can for a moment suggest that this colleague, who shall remain unnamed here, knew anything about his actions or was implicated in any way, shape, or form. But because of this past relationship, the Senator from Indiana has been reluctant throughout the hearings to get involved in the matter.

I thought about it, and was persuaded not to pursue it. None of the other members of the committee pursued it at all, and the last day of the hearings, having read and reread that record and having had brought to my attention from this reading the serious questions as to the judgment of the nominee that had been raised earlier—the Steward matter that I referred to earlier was clearly a question of bad judgment—it seemed to me that the judgment of the prospective Attorney General, his ability to know whether he is being solicited or offered a bribe or not, and subsequently his willingness or lack of willingness to report it to the highest authority, had to be a subject to be brought up before the committee and the witness questioned about it.

He had asked of the court in the New York trial on two occasions the opportunity to explain. The defense counsel had prohibited him from explaining further, and I merely asked Mr. Kleindienst

if he would explain his actions. He refused to do so. I asked him again and again, and he refused to do so. So we can only speculate as to what was going on at the time.

Mr. President, why did Mr. Kleindienst think it was a bribe after he learned of the FBI investigation? It was the same offer, made by the same man. What was it about the fact that the FBI was probing into Mr. Carson's affairs that suddenly turned something that was not a bribe into something that was a bribe? No one could possibly even guess at the answer to the question except Mr. Kleindienst. And he will not talk about it.

It is a sad day, when we have a question raised, if it is going to disappear because the only person who can answer the question will not talk about it. What is the Senate to do? Be deterred from pursuing the truth because the only man who has the truth will not talk?

Anyone has the right not to talk, of course. I feel that the right of the fifth amendment is a strong and important right. But I question whether a man who, in essense, relies on that right when testifying before the Senate Judiciary Committee should then be promoted to be the No. 1 law enforcement official in the land.

I asked myself why it was that he will not talk about the case. I think in fairness to him, since he is not here participating in the debate, I should state that he said he did have a reason. He said that he did not want to jeopardize the rights of the defendant, or of the United States, the prosecuting authority.

But that just will not wash. First of all, I am sure that Mr. Kleindienst, upon reconsideration, would not say that he would not answer questions about the case because he would possibly prejudice the U.S. case against Robert Carson. For that is tantamount to saying that he might have evidence favorable to Mr. Carson and he did not want it to get out.

I am sure that Mr. Kleindienst would not want us to believe that he is concealing evidence, for he told us that he was also concerned that the defendant's rights might be prejudiced on appeal, or on retrial. But he cannot really mean that the appeals court judges, who have already heard the case, might go beyond the four corners of the trial record, and improperly consider what he had to say before the committee; so I am sure that Mr. Kleindienst, who is about to be promoted, who is about to be promoted to the Nation's No. 1 legal officer, would reconsider that objection as well, for such a thing has never happened in this country, at least I would hope not.

That leaves one other objection—that the defendant's rights might be prejudiced on a possible retrial. But we have to realize that that would involve such a remote and extended chain of events and circumstances as to render the possible prejudice practically nonexistent. There would have to be a reversal in such a way as to permit retrial, and then a decision to retry. Then there would have to be a statement by Mr. Kleindienst that would be inconsistent with what he had testified to before, and at the same time more harmful to Mr. Carson than what he had previously testified. Then, the trial court would have to rule that that statement was admissible, or the statement by Mr. Kleindienst would have to be so notoriously and openly publicized that they could not find 12 jurors in the Southern District of New York who had not been unfairly influenced by the statement. Is that likely to occur? I think not. And I find it hard to imagine that Mr. Kleindienst himself could really put that forth as his reason for not answering questions.

But again, he would not answer the questions, and we do not seem to be able to come up with any answers of our own that are at all reassuring. So we are faced with another series of unanswered questions, dealing directly with the nominee's fitness and qualifications, and no way to get answers. And yet we are expected to approve the nomination nonetheless.

Mr. ROBERT C. BYRD assumed the Chair as Presiding Officer at this point.

Mr. LONG. Mr. President, will the Senator yield?

Mr. BAYH. I am glad to yield to the Senator from Louisiana.

Mr. LONG. Mr. President, what the Senator from Indiana has said troubles this Senator as well as several others. It brings to my mind an experience that happened during my early years as a Member of this body, which I would just like to present to the Senator for whatever it might be worth, because I think it may be enlightening to the Senator.

There was a situation where a U.S. attorney was regarded as having been guilty of impropriety in office, and his resignation was demanded by the Attorney General. Friends of the gentleman asked me to discuss that problem with the Attorney General, because this attorney contended that he had been made an improper offer, but that he had not intended to accept it; rather, he had intended to make the case against the person, and it was in seeking to make the case, to catch the man redhanded in a bribe offer, that he was accused of having participated in this corruption himself.

This Senator, discussing it with the then Attorney General, Mr. McGrath, who I believe was a very fine prosecuting attorney for the Government as well as a very able Attorney General, was told on that occasion that while he had been a prosecuting attorney, people many times made suggestions to him that they would like, in effect, to fix a case, could he not do something about this or that—in effect suggesting an improper arrangement to him. His reaction always had been to brush it aside: "No. Sorry. That's not possible." He would simply say no more about it.

The experience that I had on that occasion with the Attorney General of the United States led me to believe that that was about how a good Attorney General would look upon something of that sort: If someone makes an improper proposition, he would only brush it aside and simply go no further with the matter.

If that were the case, would not Mr. Kleindienst have been pretty much in line with what Mr. McGrath thought should be done about that kind of situation? If a person makes an improper proposition, just treat it as though it might not have been so bad at all, and say, "Sorry. It's out of the question," or, "We don't do things like that."

Mr. BAYH. I appreciate the Senator from Louisiana bringing some of his vast experience into our debate. Of course, I am not at all familiar with the case he has mentioned which he discussed with former Attorney General McGrath. No place, I should point out, does there appear to be a consistency between what that prosecuting attorney was trying to do—namely, prosecute—and what Mr. Kleindienst was trying to do. We have nothing in the record—in fact, quite to the contrary—that Mr. Kleindienst was turning this down so that he could prosecute, to get the goods on them.

Mr. LONG. The occasion I had in mind was one in which the Attorney General, the late Howard McGrath, who I believe was a man of very high ethical principles, took the view that if one made an improper proposition to a prosecuting attorney, the proper thing for the prosecuting attorney to do was just to brush it aside, even to the extent of taking the attitude that perhaps the person did not understand that what he was doing was wrong. He should just make it clear that, "No; I'm sorry. That's out of the question. We don't do things of that sort," or, "That can't be done"—that type of thing—rather than to proceed with it and say, "You made me an improper proposition, and I'm going to recommend that you be prosecuted."

In other words, the Senator can see, can he not, that many prosecuting attorneys may look at it the same way Howard McGrath did, that one should take the view that perhaps this fellow does not understand that what he is doing would be a violation of the law,

Mr. BAYH. I think the question raised by the Senator is a good point.

The Senator from Indiana is concerned about two other aspects that would be on the other side of the proposition presented by the Senator from Louisiana.

First of all, was it a bribe or was it not? If you feel that the fellow does not know what he is doing and sweep it aside, that is one thing. But Mr. Kleindienst said that a week later, after he found out that the FBI was putting a bug on the man, he knew it was a bribe. After he had time to think about it and found the FBI was putting a bug on, he felt he had better report it.

The second thing that concerns me is that either it is a violation of the Federal law, a crime, to offer a bribe to public officials or it is not. If it is not, then perhaps we ought to repeal section 201 of title 18 of the United States Code. It clearly says that to offer a bribe to public officials is a felony. I do not think the Senator from Louisiana has suggested that we should repeal that statute, and I do not want to intimate that. If we do have a criminal statute and we are talking about the Attorney General of the United States—or the man who probably soon will be Attorney General of the United States—he ought to be wise enough to tell whether or not somebody is trying to bribe him. A hundred thousand dollars is not pocket

money, not the kind of ordinary proposition one would receive, I would imagine.

Mr. LONG. Mr. President, if I might trespass upon the Senator's time, surely the Senator realizes, from his statement, that we are not talking about a situation in which a man offered Mr. Kleindienst a hundred thousand dollars. He is discussing a situation in which a man may have suggested that if this case could be fixed or if they would not prosecute the case, or some such thing, his people would like to make a contribution to the campaign of the President of the United States. Is that not what we are talking about?

Mr. BAYH. Yes. And that is covered exactly under the statute to which I have referred. I will not bother to read it. I trust that the Senator will take my word. It does not have to be a bribe to the Attorney General, but to any other person or entity. The President's reelection campaign is such an entity that is clearly within the confines of the statute—indeed Mr. Carson was convicted of the offer—a felony.

Mr. LONG. The Senator is aware that someone could come to a person and say, "We want to help the President in his campaign. We're good supporters and friends of the President. We're trying to raise $100,000 for his campaign. That has nothing to do with what we are going to talk about, we would like to talk about these cases." There sometimes are instances in which one is talking about a gray area rather than one that is black and white.

Mr. BAYH. I suppose that all of us in public life try to be honest. We are the product of our past experiences. I suppose it is very difficult to try to separate past friendships and past contributions. Although we all try, we are still aware of that somewhere in the back of our minds.

Let me read Mr. Kleindienst's testimony at the New York court, to show the Senator that this was not the situation of a man who was a friend of the President, who had been advised that the man had made contributions in the past. This was no gray area. These are Mr. Kleindienst's words:

> Mr. Carson sat down in a chair in front of my desk and said that he had a friend in New York who was in trouble, and that if I could help him with respect to his trouble, his friend was a man of substantial means and would be willing to make a substantial contribution of between 50 and 100 thousand dollars to the reelection of President Nixon.

That is rather specific.

Mr. LONG. That is clearly an improper proposition. I agree with that. But I ask this of the Senator, as I suggested to begin with: Can he tell me what is generally the practice of prosecuting attorneys with respect to an improper proposition that is made to them—to seek to prosecute the person who makes it or to brush it aside?

Mr. BAYH. I really do not know.

Mr. LONG. It seems to me that that is important; because if the prevailing practice among honorable prosecuting attorneys or those who have responsibility in connection with it would be to brush that type of thing aside, that is one thing. If the prevailing practice is to say immediately, when someone makes an improper proposition, "You have tried to bribe me and I'm going to recommend that you be prosecuted," that is a different matter.

Does not this also become pertinent? Suppose an improper proposition is made to someone—it could be the Senator from Indiana or any of us. The improper proposition very well could be the subject of criminal prosecution. Suppose, for the sake of argument, that one does not have the proof—that it is just one man's word against another's. Does the Senator relish the prospect of trying to prosecute someone if he does not have any evidence to support it, or does he prefer to turn the proposition down, refuse to have anything to do with it, and abide by his own conscience?

Mr. BAYH. The Senator from Louisiana is a very persistent and articulate Member of this body and a member of the bar. I have not had the opportunity to discuss with very many prosecuting attorneys what they do when a bribe is offered to them. The only positive reference I can vouch to is the one that the Senator from Louisiana mentioned which I am sure he reported accurately. The second is how the prosecuting attorney in the State of New York responded; that is, he brought this man before a court and a jury convicted him. The very man Mr. Kleindienst treated cavalierly, by his testimony—did not even feel he was being offered a bribe—that very man now has been convicted of a felony. So we can see how one of the prosecuting attorneys deals with this situation.

Mr. LONG. Might it not be a case where one man says, "If you can help me, this person would like to contribute to your personal campaign"? Was that the case in New York where the man offered to contribute to the campaign of someone, or was it to enrich the prosecuting attorney in New York directly?

Mr. BAYH. What I was trying to say is that the very offer to Mr. Kleindienst was the act—part of the act of involvement with Carson that resulted in his being prosecuted and convicted by a jury, that that act was sufficiently obvious to a jury and was serious enough so that Carson was convicted. Mr. Kleindienst, according to his testimony, which I could read but I will just paraphrase it, was that he did not feel it was a bribe and in the context of this exchange that both the Senator from Louisiana and I feel was a bribe, he did not feel that it was a bribe. He said under cross-examination that if he had thought it was a bribe, he would have reported it. He did not report it until he learned later the FBI would be bugging Carson. So I wonder why. I do not suggest that Mr. Kleindienst was being bought. Obviously, he could not be bought because he turned it down. But I bring this up and I think it should have been brought up in the hearings but it has been skirted around and skated over. It goes to the man's judgment. If we can have someone sit down and put his feet up on the desk and say, "If you can take care of my friend's problem, he will make a contribution," I wonder whether he would be able to recognize some other thing which may have a significant impact as well.

Mr. LONG. Might I suggest it is not entirely clear, whoever this fellow was—I only know what I have read about it and what the Senator is explaining to me about it now—that this happened to be a case of a man determined to break into the penitentiary no matter what.

Mr. BAYH. And he was successful. They let him in.

Mr. LONG. Because obviously it appears that this man was trying to bribe so many people and he did it enough times so that he finally found himself in a penitentiary. But is it not fair to suggest that a prosecuting attorney or a Government lawyer, when confronted with that problem, would have to think somewhat in terms of whether he can make his case. In other words, if someone approached him and he did not have any witnesses or any tape which he could produce as evidence or any other means, it would be one man's word against another. So it would not seem likely that a man would try to prosecute in that case, whereas if someone had some evidence, he would feel it is his duty to prosecute such a man—especially if he could prove it.

Mr. BAYH. In such a situation, it could be one man's word against another, because one man may soon be Attorney General of the United States and the question concerning me is that he is a man in that capacity—Mr. Kleindienst was just one step away from it at the time—so, does he not have responsibility to put on the record something like that, when an offer is made of that kind? Does he not have an obligation to disclose it? Should he be so naive?

There are one of two things here: First, he either did not recognize when the fellow came into his office and said, "If you take care of this friend of mine he will give $100,000 as a campaign contribution"—he did not recognize that as a bribe. That is one possibility. Or, second, he did recognize it as a bribe but did not say anything about it until he found out a week later that the FBI was putting a bug on and then, realizing that the information probably would be learned from another source, he realized he had better quickly disclose what had happened earlier.

It has to be one of those two things. I am willing to accept the first probability.

Mr. LONG. Would it not be entirely logical to assume that if Mr. Kleindienst, having regarded that as being an improper proposition, felt, when this man was subsequently accused of trying to bribe a prosecuting attorney, that what he knew about the thing might be relevant? Might Mr. Kleindienst not have then felt that prosecution of that man would be doing his duty, and that he should make available what might not have been known by anyone but the two of them? It would seem logical that the only place the evidence would have to come from would be from the Attorney General. Does the Senator think a man being prosecuted for bribery would volunteer to say that he had previously tried to bribe the Deputy Attorney General?

Mr. BAYH. Of course not. I do not see how pertinent that is.

Mr. LONG. Where else could the information have come from if Mr. Kleindienst had not volunteered the information that this man had tried improperly to influence him?

Mr. BAYH. First of all, the possibility that other information could have persuaded Mr. Kleindienst to add his little bit of information—Kleindienst never said that. The only additional information we have that came to his attention is the fact that the FBI was going to conduct surveillance. He found that out almost by accident. Immediately thereafter—within an hour or so—he revealed to the Attorney General the previous offer. I can only go to what Mr. Kleindienst himself said under oath in a New York Federal court, that he did not think at the time it was made that it was a bribe. It was not that he did not have any other evidence, or that it was one man's word against another's, or any of these things—that is the way the Deputy Attorney General dealt with this thing. He said:

I did not think at the time that it was a bribe.

Mr. LONG. Well, if I might say, if I had been sitting there as Assistant Attorney General and someone tried to make me that kind of proposition and it was just his word against mine, I do not see why I should get into that kind of mess, because under our system of justice, we have to prove a man is guilty beyond a reasonable doubt. If we only have one man's word against another's and there is nothing else to go by, most juries would say, well, perhaps we have a prima facie case here but we do not have enough of a case to convict a man beyond a reasonable doubt, and that would be the end of it.

If there is evidence that someone is trying to bribe another, and the man keeps on trying to bribe as many as he can, we could put all those witnesses together, building a strong case, and we might send him to the penitentiary. That is a probability.

Mr. BAYH. One wonders if every law enforcement official who had the responsibility in this case—had taken the same position Mr. Kleindienst had taken; namely, waiting until they found someone had the "goods" before they got involved, they never would have made a sufficient case on the guy now on his way to the penitentiary. I think he is not yet there, but he has been convicted, and his appeal has already been argued.

Mr. President, I ask unanimous consent to have printed in the RECORD two articles describing this matter in some detail as published in the New York Times.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

AIDE TO SENATOR FONG CONVICTED OF BRIBERY SCHEME AND PERJURY

(By Arnold H. Lubasch)

Robert T. Carson was convicted yesterday of participating in a bribery scheme to quash stock-fraud indictments while working for Senator Hiram L. Fong as an administrative assistant in Washington.

Carson who was suspended last January by Senator Fong, a Republican from Hawaii, displayed no emotion as the jury returned the verdict at 3:10 P.M. in Federal Court here after 18 hours of deliberation.

The tall, thin defendant, who formerly headed the Republican party and the stock exchange in Honolulu, faces up to five years in prison on each of two counts when Judge Marvin E. Frankel sentences him on Jan. 4, two weeks after the defendant's 65th birthday.

The jury of 10 men and two women found Carson guilty of conspiracy and perjury, but acquitted him on two counts of using interstate travel to promote bribery.

During the week-long trial and deliberations spread over three days, the jury heard crucial tape-recordings of discussions last December between Carson and others in the bribery conspiracy.

Richard G. Kleindienst, the deputy attorney general of the United States, testified during the trial that Carson had brought him an offer last Nov. 24 to pay up to $100,000 as a political contribution for President Nixon if help could be obtained for an indicted friend in New York.

Mr. Kleindienst said he had rejected the offer immediately but had not regarded it as a bribe at the time and had not realized it was a bribe offer until he found out one week later that Carson was being investigated for bribery.

Robert G. Morvillo, the prosecutor, contended to the jury that Carson had tried to bribe the deputy attorney general to stop indictments and investigations that concerned a major stock-fraud case.

Joseph E. Brill, the defense lawyer, told the jury that Carson had not engaged in a bribery scheme and the defendant testified that he had merely mentioned the proposed political contribution to Mr. Kleindienst without any intent to bribe him.

The bribery scheme began as an attempt to fix an indictment involving several defendants, including John (Johnny Dio) Dioguardi, and others identified by Federal authorities as members of organized crime, who were charged with stock manipulation and strong-arm tactics to gain control of a Miami investment company.

This stock-fraud case is currently on trial here in the same courthouse on Foley Square. Some of the defendants have pleaded guilty, and Dioguardi will be tried later because he is seriously ill in prison.

In the Carson trial, no mention was made of Dioguardi or organized crime, and the jurors remained sequestered under the supervision of marshals throughout the trial to avoid their exposure to publicity in the case.

The two co-defendants in the Carson case, Joseph Bald and Edward Adams, pleaded guilty before the start of the trial of Senator Fong's aide and will be sentenced on Dec. 28.

Bald, a Queens interior decorator, testified as the prosecution's first witness that the bribery conspiracy began last fall after he learned he was under investigation for fraudulent deals with Michael Hellerman, a stock operator allegedly associated with members of organized crime.

According to Bald, he asked his brother-in-law, Harold Blond, to seek the help of Adams, an elderly Manhattan fund-raiser who was said to have considerable political influence in Washington.

Mr. Blond, a Queens fund-raising consultant, named as a co-conspirator but not a defendant, testified that Adams promised to seek the intervention of Carson for a large amount of money.

He said that Adams had indicated that $100,000 would have to go to Carson for members of the Justice Department and Senator Fong, who was not charged with any crime in the case.

UP TO $1 MILLION OFFERED

Adams arranged for Bald and Hellerman to meet Carson last November in Senator Fong's offices in the Senate Office Building, Carson up to $1-million if he could quash the indictments and investigations in the stock fraud case.

According to the prosecution, Carson agreed to look into the matter, but decided the original indictment was "too hot" to quash, then said later it might be possible to obtain leniency for Hellerman by blocking any new indictments against him and Bald in exchange for $100,000.

Hellerman, who later pleaded guilty in the stock case, secretly informed Federal authorities of the bribery plans and enabled an agent of the Federal Bureau of Investigation to infiltrate the conspiracy.

The undercover F.B.I. agent, Paul J. Brana, used a concealed tape recorder to transcribe the conversation at a meeting last Dec. 29 when Carson accepted $2,500 as an advance payment on $100,000 to help Bald and Hellerman.

One week later, replying to questions before a Federal grand jury here on Jan. 6, Carson denied that he knew Adams, Bald, Hellerman or Paul Brana, which was the name used by the undercover F.B.I. agent.

BRIBE CONVICTION IS APPEALED HERE—TESTIMONY BY KLEINDIENST IS CITED BY SENATOR'S AIDE

(By Arnold H. Lubasch)

Trial testimony by acting Attorney General Richard G. Kleindienst was emphasized last week in an appeal from the conviction of a Senate aide who had been found guilty of bribery and perjury.

The appeal sought to reverse the conviction in Federal court here last November of Robert T. Carson, the suspended administrative assistant of Senator Hiram L. Fong, Republican of Hawaii.

Mr. Kleindienst testified at the trial that Carson had offered him a $100,000 political contribution for President Nixon if he could help an indicted friend. Mr. Kleindienst said that he had not realized that this was a bribe offer until a week later, when he learned that Carson was being investigated for bribery.

Carson's attorney, Henry J. Boitel, argued here Thursday before the United States Court of Appeals for the Second Circuit that Mr. Kleindienst's testimony was "extremely prejudicial" and required reversal of the conviction.

BRIEF IS QUOTED

"On the morning of Dec. 1, 1970," the lawyer argued in his brief, "the pinnacle of the Department of Justice of the United States of America was rocked by the discovery of the nature of an investigation which was being directed by an Assistant United States Attorney in Manhattan.

"On that morning Richard G. Kleindienst, Deputy Attorney General of the United States, was shown a memorandum addressed to the Attorney General from the Federal Bureau of Investigation.

"If the prosecution's allegations were correct, Mr. Kleindienst had, a week earlier, been the subject of a bribe offer and had not realized it.

"The weight of the Government's case at trial turned heavily upon whether Carson, an employe of the United States Senate, sought to convey such an offer to Mr. Kleindienst with criminal intent."

The defense attorney said that Mr. Kleindienst had testified at the trial that he had promptly rejected the Carson offer of the political contribution but had not considered it a bribe attempt at the time.

The appeal cited Mr. Kleindienst's testimony that he had not reported the alleged bribe offer for seven days, then reported it "within minutes" after he had been shown an FBI report that Carson was under investigation.

"BLATANT HEARSAY"

According to the appeal argument, it was "blatant hearsay" for Mr. Kleindienst to

testify that he considered the Carson offer a bribe only after he had seen an F.B.I. report that was not in evidence at the trial.

"His opinion, based on hearsay, that the defendant was guilty of the crime charged was extremely prejudicial," Mr. Boitel argued, adding that Mr. Kleindienst's testimony was especially damaging because it came from a top official of the Justice Department.

The detailed attack on the trial testimony of Mr. Kleindienst, who was described by the defense attorney as Carson's friend and political ally, represented one of the key arguments in the appeal for the 65-year-old Carson, who sat listening at the rear of the courtroom.

Robert G. Morvillo, the Assistant United States Attorney who directed the investigation and prosecuted the case, argued briefly in opposition to the appeal that he believed Carson had been convicted with "overwhelming evidence" in a fair trial.

The three-judge panel of the Court of Appeals reserved its decision on the case after hearing the arguments.

Carson was sentenced to 18 months in prison on his conviction of participating in a bribery conspiracy allegedly seeking to quash stock-fraud indictments that involved reputed members of organized crime, but he remains free on bail pending the outcome of his appeal.

In Hawaii, he has been president of the stock exchange and chairman of the Republican party in Honolulu.

Mr. LONG. Might I ask the Senator a further question. It would appear appropriate to me that Mr. Kleindienst might well have deemed it his duty, at the point this proposition was made to him, to dictate memorandum and put it in the file at that point. That may very well be Justice Department procedure. Can the Senator tell me whether he did or did not prepare a memorandum at that time to indicate that that man was in his office and that that man suggested something that to him seemed improper?

Mr. BAYH. No. He did not do anything until a week later. In fact, the record reads:

Q. Did you make any report or initiate any investigation with respect to that portion of the conversation?

A. No, sir.

Q. Isn't it true that the first time you ever said or wrote anything about that subject was on Dec. 1, 1970?

A. Yes, sir.

That was a week later.

Mr. LONG. It would seem to me that it would have been appropriate for Mr. Kleindienst to have made a record of what it was that took place. However, on the other hand it would also seem to me that, while Mr. Kleindienst did perhaps deserve a low mark for having said this, he should have a high mark for the fact that when it came to his attention that the man was being investigated for bribery, he made available everything that he knew on the matter and made himself available to testify against the man. One would think that a man would be entitled to credit for that.

Mr. BAYH. Yes. He could have waited until he heard the FBI say that they had been informed that Mr. Carson said so-and-so. He could have done that.

Mr. LONG. That would suggest to me that the guilty party was the man going around trying to bribe the Attorney General.

Mr. BAYH. It so happens that there was an informer in the case a day or two later who taped the conversation and may have brought it to light.

Mr. LONG. That is a very important matter. Can the Senator tell us that this informer had brought evidence out to the effect that this was actually known to Mr. Kleindienst before Mr. Kleindienst said what he knew about it?

Mr. BAYH. No. This matter came out in the trial, after the fact.

Mr. LONG. It would seem to me that would be irrelevant then.

Mr. BAYH. The Senator brought out a matter that actually did exist and was not a hypothetical set of facts.

Mr. LONG. The Senator would seek to take commendable conduct on the part of a Government attorney and turn it into dishonorable conduct on the theory that a man who did represent his office honorably and properly was probably guilty of improper conduct on the theory that the Government informer might have informed on him if he did not do what was right. Yet the Senator tells us that the Government informally had such information as that.

If the Senator from Indiana were to be confirmed as Attorney General, would it seem fair to him that a U.S. Senator would accuse him of improper conduct when the circumstances demonstrated that he had conducted himself properly and had done his duty, and yet, someone would say that he did his duty for fear he would have been found out when nothing suggested that circumstance.

Mr. BAYH. That is not what I said. I said either one or two things happened, either the proposition posed by the Senator from Louisiana or the proposition presented by Mr. Kleindienst himself. He said he did not think it was a bribe.

The Senator from Louisiana said in an earlier comment here that it was obvious to him that it was an obviously seamy arrangement. If it was obvious to the Senator from Louisiana that it was a bribe, why was it not obvious to Mr. Kleindienst?

One cannot have his cake and eat it, too. He either recognized that it was a bribe and did not report it or he did not recognize it was a bribe when any man with commonsense should have recognized it was a bribe. It has to be either way.

I am willing to let the Senator judge which way it was.

Mr. LONG. That is all right with me. However, the point I make is that a man who did his duty as a supervising prosecuting attorney, a man who had been prosecuting attorney and also Attorney General, told me personally that he thought it was proper conduct for a Government attorney when someone made an improper proposition to him, to brush it aside and have no more to do with it. If that man was speaking for the democratic process and was speaking of that as the appropriate way to handle himself, to brush it aside when someone tried to make him an improper proposition, then how could one suggest that Mr. Kleindienst should not be confirmed when all he did was what Mr. McGrath said was the proper conduct to pursue in such situations. And when he found that the matter was being investigated, he said that the man had tried to make an improper proposition to him. I suggest that if the Senator finds anything wrong in that, he can also find something right in it.

Mr. BAYH. Perhaps we ought to get together and submit a measure to repeal section 281 of title 18 so that a person can with impunity bribe public officials. If one does not have a responsibility to report it, that might solve it. I guess that everyone makes his own judgment on where to draw the line.

It seems to me that the point that concerns most of all is that the Deputy Attorney General, now Acting Attorney General, judging from listening to the Senator from Louisiana, should have said that this was SOP—when someone tries to bribe him, to dismiss the matter and move on to something else.

The Senator can say that is all right, but that is what I think is wrong. Mr. Kleindienst did not say this was the way that everyone has been operating since the 1940's or 1950's. That is not what he said. He said that he did not think that was a bribe. He was asked:

Q. So that between Nov. 24 and Dec. 1, you gave no further thought to that portion of the construction which lasted a minute or two, if that much, in which you said Mr. Carson told you he had a friend who would contribute $100,000 to the Nixon campaign?

He said that is correct and that he did not give it any thought.

I would say that if someone were to offer to give me a $100,000 contribution and I would not think about it a second time, I would have to be a little naive.

Mr. LONG. Mr. President, it seems to me that if the Senator gives him low marks for not reporting this at the time, he should give him high marks for reporting him and prosecuting him. The Senator should give him credit for the fact that he did not take the offer.

Mr. BAYH. That recommends the Attorney General highly if he does not take a bribe that is offered, if that is the only qualification.

Mr. LONG. I can recall an illustration that was given in the British Parliament when a man said: "I know I am not for sale for a quarter of a million dollars, because someone offered me that much and I turned it down." So, we have to give the man credit because when someone made him an improper proposition, he did not do business with him. And when subsequently it came to his attention that the man was being investigated, he volunteered to testify what he knew about it and did testify and put the man in jail.

If the Senator wants to give him low points for not having mentioned it in the first instance, he ought to give him high marks for testifying in the second instance.

People have made all sorts of improper propositions to officials. If one spends all his time running around prosecuting someone every time a person makes an improper suggestion, he will find that he is hurting himself as much as the people that he tries to prosecute.

Mr. BAYH. I would be glad to pursue this subject as far as the Senator from Louisiana wants. I always enjoy the challenge of participating with him in a little give-and-take like this.

The thing that concerns me is not this one case where we have an offer that the Senator from Louisiana and I recognize was improper and that was turned aside or not recognized, whatever happened to it, but we had an instance of a U.S. attorney in California, Mr. Steward, who was involved in a similar impropriety, acts that were obviously acts of impropriety. And the same man who turned his head the first time turned his head the second time and sent out a press release saying that there had been absolutely no improper conduct at all.

What really concerns me is that the Senator and I sit here and we realize how things happen. People are tempted and some yield and some do not yield. We try to wrestle with these problems, but the average citizen on the outside, who looks to us with some feeling about what this Government stands for, sees these things and the allegation that there was $400,000 with ITT to fix an antitrust case. All this presents a kind of pattern which may or may not be true; but it does not restore confidence in the average citizen who is viewing the man sitting on top of the heap who is making decisions that he is going to have to abide by.

Mr. LONG. I thank the Senator for being so generous in yielding to me. I will follow with interest the remainder of his argument. I thank the Senator.

Mr. BAYH. Mr. President, I would like to conclude my remarks by referring to something that Senator HART said on the very first morning of the hearings into Mr. Kleindienst's involvement in the ITT settlement. Senator HART had asked a question, and got back an answer that there had been nothing improper about any of Mr. Kleindienst's actions in meeting with an ITT director to discuss the settlement. And Senator HART shook his head when he heard that answer, and I remember those words very clearly today, 3 months later. He said:

> The tragedy of this is that 90 percent of the people that read the papers and listen to this story, no matter what we do, are just not going to believe it. That is the ——— of it. Just to give the setting, we are just one more chapter in this loaded story of why people lack faith in the system.

Mr. President, I cannot improve on Senator HART'S words. I can only say this—the choice is the Senate's. We can do something about this lack of faith by insisting that this nomination be recommitted and restudied until we get answers to the questions that trouble any reasonable man who sees this record. Or we can ignore the tragic implications of this whole sorry affair in the public trust and just pass the nomination through. That is the choice facing us.

Mr. President, a democracy such as ours is in dire jeopardy when the governed lack faith in the basic integrity and justice of those who govern. The evidence is persuasive that the faith of increasing numbers of Americans is daily being eroded. The Senate of the United States should not accelerate this process of erosion by acting in haste to confirm this nomination without making a maximum good faith effort to find the truth that at this moment lies hidden beneath a cloud of obfuscation and confusion. Let it not be said that this body contributed to reinforcing the suspicion of an increasingly skeptical public that there exists in this land two standards of justice, one for large corporations and another for the average citizen. We have an obligation to recommit this nomination for further study and an obligation to refrain from consenting to confirmation until the doubt of reasonable men is dispelled and truth determined.

Mr. President, I have been involved in more than one disagreement with the President of the United States on the qualifications of nominees. As I said earlier in my statement I do not feel that the definition of an acceptable nominee is one who conforms to my idea of what is right or wrong on the issues, philosophically or otherwise. Having had the opportunity a year or so ago to travel throughout this country and to be in about 43 States in a year's time, and to have had a chance to visit with, talk to and work with, and to question and be questioned by large numbers of citizens all over the country, I am deeply concerned about this whole matter of trust in the governmental process.

The number of students who have asked me, "Senator, do you really believe the system will work?" the number of unemployed steelworkers who have said, "Senator, there is something wrong with the system," the farmer who has difficulty paying off his mortgage—all these people are typical of our society and look at the decisions we make—of times cavalierly—on a day-to-day basis to determine what direction this country is going and determine what standard of conduct we are going to say typifies the United States.

Yet, when we have before us not just any nominee, but a man who will become the No. 1 law enforcement official in the country, the one person determining what kind of justice that average American gets, then I think it is incumbent upon us to be certain that that man takes that office without any damaging cloud of suspicion hanging over his head. Whether it is the Carson case, the Steward case, Dita Beard, Ramsden, or Rohatyn, names that have become passwords in America today, these names are insignificant in themselves, but they add to the pattern of concern and doubt that the average citizen has over whether he is going to get a fair shake before the bar of justice.

When a small businessman wonders if he is going to be treated the same down at the White House or by the Government anywhere, as one of the large multibillion-dollar corporations, or when the average wage earner wonders if his problems are going to receive the same kind of attention that a multibillion-dollar conglomerate will receive—when our actions add to that kind of doubt and suspicion—to approve a nomination that would add to those doubts would distort our responsibility to advise and consent, and in the final analysis it weakens the fabric of our entire governmental process.

Mr. CRANSTON. Mr. President, I believe that the publicity surrounding the investigation of Richard Kleindienst's role in the Justice Department's settlements of antitrust suits with ITT has obscured a far more fundamental question which this nomination raises.

It is the question of Mr. Kleindienst's fitness to be Attorney General of the United States.

The Attorney General of the United States wields great power which, if misused, could endanger the basic rights and liberties of Americans, either as individuals or as members of groups. Mr. Kleindienst's record leads me to doubt that he should be entrusted with this power affecting the rights and liberties of all Americans.

Because of that power, the man who holds the position should, in my judgment, be especially sensitive to and protective of our constitutional rights. His dedication to law and justice should be no less compelling than his enthusiasm for law and order.

During his 3 years as Deputy Attorney General, Mr. Kleindienst has proven that he does not meet these standards. He has shown himself to be "soft" toward certain repressive practices which, if given further license, could be the precursors of an authoritarian society—practices we should be particularly wary of in this age of electronic snooping devices and computerized data banks.

Mr. Kleindienst has evidenced a high tolerance for wiretapping, mass arrests, and preventive detention. His thinking is fuzzy when it comes to distinguishing between people who threaten our Nation's security and people who merely disagree with him politically. And he manifests a disturbing desire to have us all rely entirely on the good will of members of the executive bureaucracy as the ultimate safeguard of our freedoms.

There are those who believe that, unlike Supreme Court nominations, the President has a right to pick the members of his own Cabinet without senatorial challenge, provided only that his nominees are not dishonest nor incompetent nor guilty of an economic conflict of interest.

I do not entirely disagree. I recognize that the Senate should permit a President considerable latitude in selecting members of his Cabinet, but I doubt whether a courtesy the Senate customarily grants a President deserves elevation to an unchallengeable presidential right.

Moreover, I hold that the special nature of the post of Attorney General makes it not altogether unlike that of a Supreme Court Justice in its potential impact on our constitutional way of life. I believe further that the criteria the Senate uses in evaluating a nominee for Attorney General should be far more like those it applies to a nominee to the Court than, for example, to a nominee for Secretary of Commerce or of Transportation. Or even for Secretary of State or Defense.

I believe that partisanship must stop at the doorways of the Justice Department in Washington and the offices of the 93 U.S. attorneys throughout the United States.

A reappraisal of the criteria the Senate applies to Attorney General nominations would under any circumstances be pertinent at this moment in our his-

tory. But the need for reappraisal has become even more cogent with the resurrection of a short-lived practice—discontinued before the Civil War, revived in our time by a Democratic administration, and subsequently pursued by Republican and Democratic administrations alike—of appointing highly partisan political activists to head our Justice Department.

According to research conducted for me by the Library of Congress, not a single partisan political activist was named to the office of Attorney General during all of the first 52 years of the life of the Republic.

That covered the administrations of eight Presidents, including some of our greatest: Washington, Jefferson, Madison, and Jackson.

The first political linkage with the Attorney General's position came in 1841 with the administration of William Henry Harrison and continued for a brief period—less than 20 years—through subsequent administrations. But even then it was only in rather mild form. Attorneys General even during this period were not drawn from the ranks of national campaign managers or from the leadership of the national parties.

John J. Crittenden, Attorney General under William Henry Harrison and, later again Attorney General under Fillmore; Hugh S. Legare, Attorney General under John Tyler; Caleb Cushing, Attorney General under Pierce, and Jeremiah Black, Attorney General under Buchanan are recognized by historians as having played crucial roles in winning the nomination and/or the election for the men who appointed them.

Abraham Lincoln stopped the policy of appointing partisan political figures as Attorneys General. It was not revived until the 20th century, and even then in somewhat diluted form.

Thomas W. Gregory and A. Mitchell Palmer, both of whom were Attorneys General under Woodrow Wilson, were key figures in Wilson's nomination and election. Gregory is given credit for swinging the crucial Texas delegation behind Wilson, as well as more general contributions. Palmer was Wilson's floor manager at the 1912 Democratic convention.

The modern version of the practice actually started with Franklin Roosevelt who, for the first time in our history, nominated a former national chairman as Attorney General: Homer S. Cummings. It should be noted. however, that Cummings had held that political post in 1919–20, a full 13 years before his appointment in 1933.

Harry Truman escalated this unfortunate practice by appointing as his Attorney General in 1949 the man who was Democratic National Chairman from 1947–49: J. Howard McGrath. The practice has stuck since.

President Eisenhower appointed as his Attorney General Herbert Brownell, former campaign manager for Republican candidate Thomas E. Dewey in both 1944 and 1948, and chairman of the Republican National Committee, 1944–46.

President Kennedy appointed Robert Kennedy, who was his national campaign manager in 1960.

Lyndon Johnson retained Robert Kennedy as his Attorney General for more than a year after President Johnson assumed office.

President Nixon appointed his campaign manager, John Mitchell, as his first Attorney General. Mr. Mitchell once again is the President's campaign manager. And now President Nixon proposes to succeed Mr. Mitchell with Mr. Kleindienst—presidential campaign director for candidate Barry Goldwater in his 1964 presidential campaign, and national director of field operations for candidate Richard Nixon in the campaign of 1968.

I would like to see the practice stopped. Now.

It is ironic, and more than a bit frightening that the Office of Attorney General has become more and more politicized during the very time when more and more power over the lives and the liberties of our people has become concentrated in a Federal bureaucracy in Washington.

For the sake of democracy and of freedom, we should have been heading in the very opposite direction over the past 40 years.

If political power was to become more and more centralized, then it was all the more vital that the men named to the one Cabinet post charged with upholding the law and the Constitution against the oppressive power of government be men far removed from the pressures and the temptations of partisanship. Yet instead of more protections of our liberties and our privacy, the past four decades have seen a steady intrusion of government into all facets of our lives and a steady erosion of individual rights and liberties.

I am not in any way suggesting that any of the men who have held this office in the past several years have used their power for this purpose. But history and logic and common sense tell us—and the fragility of the democratic process warns us—that we must not tempt fate forever. We Americans are not a species apart from the rest of mankind; we are not immune to the political evils of repression and totalitarianism that have befallen other peoples in other lands.

It can happen here. Eternal vigilance is more than the price of liberty; it is the only safeguard of freedom.

I think that continuing the dubious practice of appointing a political partisan to the sensitive office of Attorney General is a mistake.

At the very least, such a nominee's political opinions and his political activities become legitimate subjects of scrutiny—and legitimate grounds for objection—when he is considered for confirmation.

When a highly partisan political figure is nominated to the post of Attorney General, the Senate—in my opinion—has a responsibility to give such a nomination extra careful study.

Such a nominee should be confirmed only after he has satisfactorily removed every reasonable doubt from the minds of those who fear that he might use his awesome powers of the law to silence or suppress or discourage political opinions or political actions with which he disagrees.

Mr. Kleindienst's record both before and since joining the Justice Department has by no means removed all such doubts from my mind. On the contrary.

The past 3 years of a Justice Department of Mitchell, Kleindienst, and Rehnquist have been years of no-knock, of preventive detention, of unwarranted wiretapping, of citizen surveillance, of mass arrests, of illegal arrests, of harrassment of the press, of efforts to discourage the free exercise of first amendment rights of speech and assembly.

By nominating Mr. Kleindienst to move up in the Justice Department to the No. 1 spot from the No. 2 spot, where he had exercised day-to-day operational responsibility and played a major role in policy formulation, President Nixon has signaled that he wants this policy of repression to continue. It is his policy; he has a right to seek its continuance.

But it is not my policy. I do not want to see it coninued. And I have an equal right to seek to bring it to an end.

I shall not vote, I cannot vote, to perpetuate a policy which I believe can, if unchecked, undermine the basic liberties of the American people.

Testimony at Senate Judiciary Committee hearings since the ITT disclosures has intensified my concerns about Mr. Kleindienst's candor and about his ability to divorce his political interests from his juridical responsibilities. Testimony prior to the disclosures intensified my fears about his disregard of the importance of constitutional government and his low esteem for the vital safeguard of due process of law in a democratic society.

I intend to vote against confirmation of Mr. Kleindienst as Attorney General.

Were I to vote to confirm Mr. Kleindienst I feel I would, in effect, be voting for the things that he has come to symbolize and voting against the things I believe America stands for.

I cannot in good conscience cast such a vote.

Mr. President, I want to talk now about May Day—May 1, 1971—when 12,000 people, guilty and innocent alike—and very few indeed turned out to be guilty of anything—when, as I say, 12,000 people were rounded up on the streets of Washington, illegally arrested and illegally detained—from 30 to 36 hours—under near-concentration camp conditions which, at least one judge, described as constituting "cruel and unusual punishment" and effecting "irreparable injury."

The man who was in charge of this operation, the man primarily responsible for what was done on that May Day was Richard Kleindienst, who describes himself as having been Mr. Mitchell's "chief of staff" and "coordinator" of law enforcement operations in Washington that day.

Because the events of that day so forcefully illustrate my fears and concerns about Mr. Kleindienst as Attorney General of the United States, I want to read at some length an excerpt from an outstandingly perceptive article written by Richard Harris, which was published by the New Yorker Magazine on March

25, 1972. The article, entitled "The New Justice," gives the following description of the events of May Day 1971:

THE NEW JUSTICE

In an appearance before Senator Ervin's subcommittee last year, Assistant Attorney General Rehnquist assured its members that no one had to fear government surveillance, because in an important matter involving the rights of citizens the Administration could be relied on to conduct itself with "self-discipline." To date, the most notable examples of this doctrine in practice have been the government's self-discipline in not making vigorous efforts to prosecute the National Guardsmen who killed four students and wounded eight others at Kent State University in 1970 or the Mississippi state troopers who murdered two students at Jackson State the same year. Perhaps the best measure of the Administration's promise to behave with restraint was its response to the Mayday demonstration in Washington last spring. After the riots that crippled Washington following the assassination of Dr. King in 1968, an advisory panel recommended that in future large-scale disturbances police use "field-arrest forms." Under this system, which the panel devised, a policeman who has arrested someone is to take him to the nearest police van, where a Polaroid photograph is taken of the two together as evidence that a particular officer arrested a particular person; the officer is then to fill out a brief form describing the circumstances of the arrest, attach the photograph to the form, and give the document to the custodian of the van.

Washington police adopted this system, and during the comparatively small protests that took place in Washington in the days immediately preceding May 3, 1971—the day that a group of militant anti-war protesters known as the Mayday Tribe had promised to halt traffic and slow down government operations throughout the city—the new procedure was used successfully in several hundred arrests. But at a little before seven o'clock on the morning of Monday, May 3rd, Chief of Police Jerry V. Wilson suddenly ordered use of the field-arrest forms suspended and the streets cleared. Within a few hours, more than seven thousand people had been arrested. Almost all of them were charged with disorderly conduct, which is a misdemeanor. Assistant Attorney General Rehnquist justified the government's action, which, he said, had been taken under a legal principle akin to "qualified martial law."

There is no such legal principle. Nor was martial law, or anything resembling it, invoked by the Administration. The principle that should have applied to the arrests was a very basic and very simple one: due process of law. Under federal law and most state laws, a police officer cannot arrest someone for a misdemeanor unless he sees the person commit the crime and can identify him and describe what he did before a magistrate. Wilson's order openly violated this elementary rule of due process, for, as everyone knew at the time, few policemen would later be able to connect suspects with acts committed during the melee.

In sum, any policeman who made an arrest without recording on the spot the identity of the suspect and the details of the crime made prosecution impossible. That, under the law, made the arrest illegal. Some of those who were arrested that day were taken into custody while they were actually breaking the law, but since they were arrested in a manner that precluded prosecution, they were arrested illegally. Others who had broken the law earlier and intended to break it again later were arrested while they were not doing anything wrong, so their arrests, too, were illegal from the moment they were taken into custody. And still others who were illegally arrested were innocent bystanders: passersby, attorney observers, government employees and business people on the way to work, journalists, and even a group of Canadian schoolchildren who had been brought to Washington by their teacher to observe democracy in action. Since a person who is unlawfully arrested or against whom there is no evidence of having committed a crime cannot be lawfully detained, the imprisonment of almost all the people locked up that day—and then held for anywhere from ten to sixty hours—was illegal. And every official involved—from the greenest rookie cop to the police chief, from the staff of the District's corporation counsel to the mayor, and from junior lawyers in the Justice Department to the Attorney General and the President—could not help but know that the most basic Constitutional right of due process of law, which lies at the heart of our system of criminal justice, was willfully disregarded from the moment that the first arrest was made until the last prisoner was released.

Chief Wilson, who is widely regarded as one of the most skillful and decent police chiefs in the country, took entire responsibility for suspending the field-arrest forms and ordering the mass arrest. It would be difficult to find anyone experienced in the ways of government who believes that these moves were made without prior approval by the Attorney General, with whom Wilson spent the better part of the Saturday before the arrests, and by the President, who had vowed that the protesters would not be permitted to close down the city for even an hour. "After all, the federal government is immediately and finally responsible for what goes on here," a judge who sat on many of the Mayday cases said afterward in private. "It is utterly inconceivable that a policeman would be allowed to make unprecedented decisions of that magnitude. However, it is not inconceivable that he would be allowed to take the blame." Time after time that day, Wilson was observed watching his men behave illegally and doing nothing about it; for example, they repeatedly ordered people, demonstrators and passersby alike, to move on, and then arrested them when they did.

"Wilson was therefore guilty of openly flouting the Constitution," the judge went on. "Since he did that in full public view, he must have known that he had his superiors' full support. That proved to my satisfaction that a high-level decision had been made to arrest as many people as possible."

On May 4th, thirty-eight hundred more people were arrested, over half of them for sitting down on the street in front of the Justice Department. Another judge, who happened to be on hand, later described what he had witnessed. "The demonstrators were orderly and peaceful," he said. "They came there by prearrangement with Chief Wilson, who had led them in an orderly fashion down the street. When they were all jammed in before the Justice Department, he waved them to a stop, and they sat down. Then, suddenly, the police came out of hiding in buildings at either end of the Department and slid across the street like two doors, boxing in the crowd. They put up barricades and ordered everyone to disperse. When some of the demonstrators tried to obey, they were arrested for crossing police lines. Then some of the cops who had taken off their nameplates waded in and started clubbing the kids on the perimeter, who sat there, unresisting, and took it. When no one fought back, the cops stopped beating them, and then everyone was arrested. This was a legal gathering—an expression of every citizen's right to petition the government for a redress of grievances and to speak and assemble freely. But by some sudden flick of an official switch it was all made illegal, without a shred of justification under the law. Every policeman who arrested anyone there ignored the law. So did Jerry Wilson, who gave the order. And so did the Attorney General, who was watching from a balcony at the Justice Department and didn't lift an eyebrow at this public rape of the people's rights." On the following day, fifteen hundred more people were arrested, twelve hundred of them on the steps of the Capitol, where they had gathered, peaceably and without any threat of violence, to listen to anti-war speeches by three members of Congress. Without warning, this crowd—or audience—was also rounded up and taken off to jail.

Of course, the Mayday Tribe's attempt to stop the government from operating was itself illegal. It was also foolish, and it produced some extremely ugly and senseless acts of violence. In a speech before the Rotary Club of Cleveland a month later, Deputy Attorney General Richard Kleindienst described a long list of these to demonstrate his contention that the government had been forced to respond as it did. Undoubtedly, each act that he mentioned had actually taken place. But his speech, entitled "Mayday Fable and Mayday Fact," contributed more fable than fact to the popular legend about the event by implying that his catalogue was typical of "this vicious and wanton mob attack."

Such behavior was no more typical of the protest than the occasional outburst of brutality committed by some officers was typical of the Washington Police Department. (Most of the violence that Kleindienst described occurred in Georgetown, and it was largely due to a lack of forethought on the part of the police there. They failed to have enough men on hand at the spot where the greatest concentration of young people was bound to be—the vicinity of Georgetown University—and although the police were outnumbered, they provoked a confrontation unnecessarily, and at the same time neglected to cordon off the small area involved, some ten blocks in all, or to reroute traffic entering it by way of the only through street in that part of town.) In any event, word had gone out from the Mayday organizers to campuses around the country that anyone who had violence in mind should stay away from the demonstrations, and while some of those who turned up assuredly were bent on violence, the consensus was that their number was probably one or two per cent of the total—some two hundred to four hundred hard-core radicals in all. As for the claim that the government's dragnet arrests had been necessary, most experienced observers were convinced that if the actual lawbreakers had been handled calmly under the field-arrest-form system, government workers would have been delayed in getting to work by, at most, an hour—the kind of delay that is ordinarily caused by a heavy rain or a light snow. "But the President had vowed that there would be no stoppage of the government, even for an hour, and he kept his word," one observer said a few days later. "God knows what he might do if there were a real emergency."

The police and the Administration were fully apprised of most of the demonstrators' plans, because several weeks earlier the Mayday organization had widely and openly distributed a twenty-four-page booklet called "The Mayday Tactical Manual," which described in detail the methods to be used during the protest. Early Sunday morning, the day before the mass arrests, the police gave the protestors four hours to break up their encampment in West Potomac Park. Almost all of the people there obeyed, and on their way out of the park their leaders posted hand-lettered and mimeographed signs on trees notifying everyone, including a legion of undercover agents, that such-and-such a state group would meet at such-and-such a place elsewhere in the city at such-and-such a time. When these meetings took place again with undercover agents present, they were devoted to discussions of the specific targets for the next morning. Everything was talked over openly and each plan was

voted on, communal fashion, in each group. Most of the plans involved little more than elaborate practical jokes; for instance, an especially popular one was for several demonstrators to pretend to look for a missing contact lens in the middle of a key intersection during rush hour. A more serious proposal was that trash containers on street corners and loose materials at construction sites be used to block traffic. Despite these forewarnings, neither city nor federal authorities took any steps to remove the containers or guard the sites.

One lawyer who served as a congressional observer rose at 5 a.m. on May 3rd and proceeded to drive around Washington to see what was happening. "Between six and seven o'clock, I made a complete circuit of all the city bridges, where the main trouble was expected, and found practically no trouble," he reported later. "At one small exit, about sixty kids were sitting down on the ramp. I was the first motorist who was stopped. After a couple of minutes, they got up and left in a group. If they had had any kind of a plan at all, they would have detailed twenty people or so to stay and cut off that exit, while the rest went on to do something else. But apparently they only wanted to stay together. They were just kids, with no plan, no coordination, and certainly, in this particular case, with no vicious, wanton aims in mind. If they had planned to sabotage cars, they would have disabled mine, but they made no attempt to. When they left, they got teargassed—at that point, for doing nothing illegal. Then I drove around the grounds of the Washington Monument half a dozen times. Periodically, a few demonstrators would go out and sit down in the street, and the police would tear-gas them—again unnecessarily, because it would have been a simple matter to arrest them, without gas or violence or even much delay. As for the trash cans that got so much publicity, I found that most drivers simply stopped, got out of their cars, removed the cans, and drove on. There was almost no delay anywhere. In fact, because the presence of so many policemen discouraged double parking and illegal turns and such, most people got to work more quickly than usual."

Afterward, the police contended that if the field-arrest forms had not been dispensed with officers would have had to spend more time processing than arresting people. "That claim was based on the assumption that *all* of the demonstrators were going to break the law sooner or later, so they *all* had to be arrested," the same lawyer commented afterward. "But that was a wild assumption, because a lot of the kids were just out for a lark and would have fled at the first sign of a real bust—at least in the areas I observed. If the arrests had been confined to those who actually broke the law—a fairly simple matter—that would have scared off many of the others and reduced the problem to a manageable size." He went on to point out that while the number of demonstrators was limited to around twenty thousand at the outside, and the number of key intersections and bridges they could hope to tie up was limited to perhaps twenty, the number of troops available to Chief Wilson was, in practical terms, unlimited. "Wilson could have had all the troops he could possibly have used deployed wherever he wanted to keep the traffic moving," the lawyer added. "But it seems that he was unwilling to admit that his men couldn't handle things alone, so he ordered the mass arrests. At that point, he had to make a choice between violating the President's orders or the Constitution."

Apparently, it was also a case of official reliance on unreliable intelligence agents, who reportedly fed their superiors' worst fears by submitting as facts the kind of hysterical rumors that are most commonly the work of *agents provocateurs*. The only intelligence network that was worse than the Police Department's was the Justice Department's. "No one high up in the Department seems to know that you can pay small prices for big gains," a former employee in the Department said shortly after leaving there a year ago. "They have no imagination, no experience, no skill. And although they're supposed to be tough, cool guys, they jump out of their skins at the slightest shadow. Their fears are always political fears, and they are so committed to their impressions that they can't escape from them, whatever the evidence to the contrary. For example, Kleindienst later charged that there had been an international threat involved in the Mayday affair, because a few members of the crowd there had gone to Hanoi earlier to talk to North Vietnamese students, and one had also gone to Paris to talk to the North Vietnamese peace negotiators. It's difficult to believe that a grown man could get up and say that sort of nonsense—until you remember that he was one of Goldwater's campaign managers in 1964, and is a real Red-menace type. Of course, most of the intelligence material he relies on comes from F.B.I. agents, and they don't understand the simplest things. Shortly after Mayday, several hundred lawyers came down from Wall Street to protest the invasion of Cambodia. They were all dressed in three-piece Brooks Brothers suits and were carrying briefcases, and the F.B.I. men tried to infiltrate them while still wearing the beards, purple shirts, and bell-bottom trousers left over from Mayday."

Having ignored due process of law in arresting and imprisoning the Mayday people and anyone else who happened to be in the area being swept, the Administration proceeded to ignore the Constitutional and human rights they were entitled to as federal prisoners. The detention centers were human stockyards, or worse. They were dangerously overcrowded, some to the point where mass hysteria or violence was a constant threat; there were few beds or blankets, sanitary facilities were inadequate, and the filth, stench, and danger of influenza and hepatitis went unchecked. The government claimed that it was doing its best—to make certain, one critic remarked, that the prisoners would not be in a hurry to protest again. One judge took a look at the worst place of all—a cellblock under the Superior Court Building, where six hundred people were crammed into cells built to hold a quarter as many—and ordered that they be transferred at once to proper quarters, and officially stated that they had suffered "cruel and unusual punishment and irreparable injury." During the five days that demonstrators were detained, lawyers were denied access to most of the detention centers for protracted periods.

Where conditions were the worst of all—in the cellblock—the police refused to allow lawyers from the District of Columbia Public Defender Service, the American Civil Liberties Union, and other legal-aid organizations in to confer with prisoners for nearly a day, on the ground, as a representative of the Police Department later testified under oath, that they gave the prisoners undesirable advice and were unwilling to cooperate with the police. Kerby Howlett, a Public Defender Service attorney who regularly worked in the cellblock during ordinary times, finally got admitted there, along with one other lawyer, on a court order. "Nobody has ever had so many Constitutional rights violated in this town before," he said afterward. "On the day of the mass arrests, I saw many, many examples of police brutality. Cops clubbed demonstrators who hadn't done anything. If the cops couldn't catch somebody who had just broken the law, they'd club the nearest person, sometimes a demonstrator, sometimes just a passerby. But the cellblock was the worst thing I'd ever seen. The police there were full of hatred. Some of them whom I'd known for years and considered friends asked me why I wanted to help these rotton Commies—why did I want to stay in this filth? They suggested that I leave, and let them do the job that had to be done. I had expected to find a bunch of hell-raising kids spouting obscenities—the kind that the papers and TV had concentrated on—but most of them were decent, straightforward kids. They were militant, but they weren't at all radical or even sophisticated in terms of politics or political protests. But the police had a hatred for them unlike anything I'd ever seen before—far worse than their reaction to blacks during the 1968 black riots or even to black cop-killers. I had nightmares afterward—here it was, unbridled police power encouraged by the highest authority in the country."

To process the seven thousand people arrested on May 3rd, the Justice Department that night sent over some of its lawyers, who were generally young and inexperienced in such procedures but willing to help out after they were told that their assistance would enable the young people to obtain their release and be sent off to find hot food and warm beds. It wasn't until these lawyers had been processing prisoners for several hours that one of them realized what he was actually doing on instructions from his superiors in the Justice Department—falsifying arrest records. When he told his colleagues of his discovery, several of them immediately switched over to the legal-aid side and began advising the prisoners not to accept the Justice Department offer. One of these lawyers later testified under oath about what he had been told to do by the Department. First, he said, they were instructed to fill out an ordinary arrest form by writing down all pertinent personal data about the prisoner at hand.

Then under "Location of the Arrest" they were to write "D.C.," under "Type of Premises" they were to write "Public street," under "Specification" they were to write "Arrested during demonstrations in D.C. on May 3, 1971," and under "Arresting Officer" they were to write the name and badge number of one police officer, taken in rotation from a list of seven. Of course, the absence of specific details rendered the forms legally worthless (that is, once a judge saw them), and the arbitrary choice of arresting officers made them as unlawful as the arrests themselves. If any doubt remained about the Justice Department's determination to keep the protesters under its control as long as possible, law or no law, the betrayal of its own young employees, who by concocting official records may have committed far more serious crimes than any that the demonstrators were accused of, finally settled it.

While the police and the Justice Department's highest-ranking members were violating the letter of the law, the courts were violating its spirit. The District of Columbia Superior Court, which was set up by the court-reform part of the D.C. Crime Bill, was the court that was immediately in charge of the Mayday cases during the early stages. Its chief judge, Harold H. Greene, who had formerly served in the Civil Rights Division of the Justice Department in the Kennedy Administration, was known among his fellow lawyers as both capable and decent. As soon as the District of Columbia Public Defender Service learned of the mass arrests on Monday, May 3rd, it hurriedly drew up a petition for a writ of mass habeas corpus and submited it to Judge Greene. He heard arguments by both sides, the other side being the D.C. corporation counsel, under direction of the Justice Department in this case, and then, at eleven o'clock on Monday evening, granted the request—to take effect twenty-one hours later. That got the government through the next two crucial periods of rush-hour traffic—Tuesday morning and Tuesday evening. "Considering that the arrests were clearly illegal and that the defendants were

being illegally held in horrible conditions, his decision was obviously based on political rather than judicial concerns," one defense attorney said later. "Judge Greene violated the whole purpose of habeas corpus, because he put himself in the role of an executor of public policy rather than in the role he was supposed to fill—the judge of that policy on objective legal grounds. To my mind, it's far worse for a judge to act as he did than it is for a cop to club an innocent person. At another point, defense attorneys pleaded with Judge Greene to order that they be allowed in to give the prisoners counsel, and, after a long delay, he ordered that two lawyers be allowed into the cellblock to consult with six hundred people for one hour. Ordinarily, anyone accused of disorderly conduct in Washington—the charge that nearly all the demonstrators were held under—is released upon posting a ten-dollar bond. Aware of this, the protesters had come to town with at least ten dollars apiece. Suddenly, after a meeting in the chief judge's chambers, judges of the Superior Court began setting bail in uniform amounts—usually two hundred and fifty dollars—and bail bondsmen uniformly refused to deal with demonstrators.

To get the young people out of detention, the Public Defender Service finally informed Judge Greene that it would try to persuade them to be processed if he would order that the processing not constitute an arrest record and that no records be sent on to the F.B.I., since it routinely distributes these on request to local police departments and to credit bureaus and banks; defense lawyers hoped to forestall this in the expectation that the cases would ultimately be thrown out for lack of evidence. Greene issued the order requested, but then the corporation counsel appealed the decision to the District of Columbia Court of Appeals, and this court overruled Greene. In the meantime, many of the demonstrators who had heard about Greene's order had agreed to undergo processing, and now had police records. "There was absolutely no basis in law for the Court of Appeals' order," Barbara Bowman, director of the Public Defender Service, said afterward. One widely accepted explanation was that the court knew the Justice Department wanted the fingerprints and photographs of all the demonstrators, and wasn't going to stand in the way; in the course of the litigation during that week, it seemed clear that, next to keeping demonstrators off the streets, establishing arrest records for them was the main aim of the government. "It was terrible to stand up there in court," Mrs. Bowman said, "knowing that you were absolutely right in appealing to the judges to understand that not far away thousands of people's basic rights were being abused and to suddenly realize that nothing was going to be done, because no one cared." Although there is no indisputable evidence that the Administration compelled, or persuaded, judges to delay matters, when one of them was privately asked if reports of such pressure were true he answered, "I can give personal assurance that they are."

On May 6th, a spokesman for the Administration announced that President Nixon was "totally satisfied" with the way the Mayday demonstrations had been handled, and added that no evidence had been produced to show that any unlawful arrests had been made. Two days later, the President met with Chief Wilson and commended him for acting "with firmness but yet with restraint." Two days after that, Attorney General Mitchell, in a speech before the California Peace Officers' Association, called the demonstrators "rights robbers," compared them to the Brown Shirts in Germany in the nineteen-twenties, praised "the valiant Washington policemen," and urged his listeners to adopt the same practices in the event of mass civil disobedience and disorder in their cities. During a Presidential press conference three weeks later, Mr. Nixon responded to a question about the affair by saying that the government has always protected the right to lawful dissent. Then he added, "But when people come in slice tires, when they block traffic, when they make a trash bin out of Georgetown and other areas of the city, and when they terrorize innocent bystanders, they are not demonstrators, they are vandals and hoodlums and lawbreakers, and they should be treated as lawbreakers." To be sure, those who acted in such ways should have been treated as lawbreakers. But the point was that they weren't. By treating the guilty and the innocent alike—illegally—the government made it impossible to prosecute those who should have been prosecuted. It also probably turned many ordinary dissenters into confirmed radicals. When Ralph J. Temple, legal director of the A.C.L.U. in Washington, talked to a group of prisoners who were held in the Washington Coliseum, they kept asking him what had happened, why couldn't they use or telephone or get legal help. "Yes, you have those rights and they're being violated because the court system has broken down," he answered. One of the prisoners nodded, and said, "You see? The Establishment has won, as we've been telling people like you all along. You tell us to work within the system, and when we try to, *they* ignore the system. Oh, they may throw us a sop now and then, but when it comes to the crunch they smash us with naked power."

Apparently, President Nixon had not learned much from his hasty prejudgments of Charles Manson and Lieutenant William Calley in earlier press conferences, for when he charged that the Mayday protesters who had been arrested were lawbreakers more than four thousand cases were still pending before the courts. Of the first two thousand defendants, one was found guilty. In the cases of nearly twenty-five hundred other defendants, which were dropped for lack of "adequate evidence," the A.C.L.U. volunteered to take on the task of notifying them that they did not have to appear for trial if the prosecution would provide a list. It did—one that was partially illegible and lacked a large number of addresses. When the A.C.L.U. finally got a proper list, it learned from some of the people on it that their inquiries to the Superior Court clerk's office about the state of their cases, after the order to drop all charges had been issued, had brought the uniform response that they had to appear for trial. The A.C.L.U. complained to the court, which explained that this had been an error and promised that it wouldn't happen again. Afterward, several A.C.L.U. employees telephoned the court, said that they were defendants on the list, and asked about their cases; they were all told that they had to appear for trial. Whenever defendants whoses cases had not been dropped failed to appear for trial, corporation-counsel attorneys invariably asked the court to forfeit their posted bonds and to file criminal records; this resulted in about two thousand technical convictions. Another six hundred people pleaded either guilty or no contest—according to the A.C.L.U., under coercion. Of the other thousands of people arrested and detained, sixty-one were finally convicted—all on minor charges. In the end, the United States Circuit Court of Appeals threw out all the cases remaining that had not been settled one way or another, and directed that criminal records not be sent to the F.B.I. or, if they had already been sent, that they be returned.

Shortly before the Presidential campaign of 1968, Mr. Nixon remarked that any American President's overriding concern must be foreign affairs and that he can leave domestic matters largely to his Cabinet. As misguided as that outlook may be—no leader can deal successfully with other nations unless he has dealt successfully enough with his own to have its people behind him—it suggests that President Nixon may not have been fully aware of what his subordinates in the Department of Justice were actually doing when they devised the new anti-crime laws or when they put down the Mayday threat.

Indeed, it is even possible that neither he nor the deputy to whom he gave the greatest trust and responsibiltly in domestic affairs, former Attorney General Mitchell, realized what such policies could lead to. As largely political men, they have often seemed to view the power the people have given them to do what is fitting as power to do as they see fit. To such men, who have demonstrated an inclination to consider the immensely complex forces of the nation solely in terms of short-run political gains or losses, the Constitution must at times seem an obstacle to their ends rather than a bulwark of the people's freedom. And it is conceivable that the President and his Attorney General never fully acknowledged to themselves one price they paid for the support of the right wing in 1968—the appointment of Goldwater, Thurmond, and Reagan men to key places in the Administration.

Yet these men, too, undoubtedly believe in their cause—to preserve America as they understand it. For instance, Richard Kleindienst, Attorney General designate, who was in daily charge of the Department of Justice and *had* to know what his subordinates were doing, is, apparently convinced that a few thousand radicals on the opposite side, with no power and no support from the public at large, threaten to bring down the nation. None of these officials has acted or spoken in any way that would demonstrate an understanding of how fragile a system our democracy is. If they do in fact understand that, then their official actions—in pressing for laws that can now be used to crush civil liberties, in prosecuting leaders of the anti-war movement to still dissent, in harassing the press to end criticism, in invading the privacy of tens of thousands of citizens to catch a handful of crooks, in illegally suppressing protest to show firmness—must be taken as signs that they see the system's weakness as an opportunity, not a peril. The system has survived this long largely because no President before now has used, or allowed to be used in his name, the people's deepest fears to divide them and to turn the majority's tyrannical instincts against his political enemies. No one can say that the President has willfully set out to undermine the Constitution that he swore to uphold. But how would the results be different if he had?

Mr. President, I yield the floor.

The PRESIDING OFFICER. What is the will of the Senate?

Mr. FANNIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I make the following requests as in legislative session:

VACATION OF ORDER FOR RECOGNITION OF SENATOR PROXMIRE ON MONDAY NEXT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order

for the recognition of the distinguished senior Senator from Wisconsin (Mr. PROXMIRE) on Monday next be vacated.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE PUBLIC HEALTH SERVICE ACT—UNANIMOUS-CONSENT AGREEMENT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at such time as S. 3442, a bill to amend the Public Health Service Act, is called up, there be a time limitation thereon of not to exceed 20 minutes, the time to be equally divided between the Senator from Massachusetts (Mr. KENNEDY) and the Senator from New York (Mr. JAVITS); that time on any amendment thereto be limited to 10 minutes, to be equally divided between the mover of such amendment and Mr. KENNEDY; and that the time on any debatable motion or appeal in connection therewith be limited to 10 minutes, the time to be equally divided between the mover of such and Mr. KENNEDY.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on Wednesday next, at the beginning of the period for the transaction of routine morning business, the Senate proceed to the consideration of Calendar No. 791, S. 3442.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, there will be a rollcall vote on S. 3442 on Wednesday next, and I ask unanimous consent that it be in order to order the yeas and nays on S. 3442 at any time.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask that staff people not walk in front of Senators when Senators are addressing the Chair.

The PRESIDING OFFICER. The Senator's request is well taken.

AUTHORIZATION FOR THE COMMITTEE ON COMMERCE TO FILE REPORTS UNTIL MIDNIGHT TONIGHT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Commerce be authorized to file reports until midnight tonight.

The PRESIDING OFFICER. Without objection, it is so ordered.

NOMINATION OF RICHARD G. KLEINDIENST

Mr. HRUSKA. Mr. President, earlier in the discussion this afternoon in connection with the confirmation of the nomination of Mr. Kleindienst, some colloquy was engaged in between the Senator from Louisiana (Mr. LONG) and the Senator from Indiana (Mr. BAYH) in regard to the so-called Carson case.

During the hearings, the Senator from Indiana was considerate enough to call attention to the fact, while Mr. Kleindienst was a witness before the Judiciary Committee, that a couple of articles had appeared, one in the Boston Globe and one in the Washington Star, on the subject of the Carson case indicating that Mr. Kleindienst should be given an opportunity to go into this matter in greater detail than he had in the trial of this case in New York.

The Senator from Indiana did ask the nominee about the case and he declined to amplify his New York testimony. As to why Mr. Kleindienst took this position, we find his statement thereon on page 1710 of the hearings. Mr. President, I ask unanimous consent to have printed at this point in the RECORD an excerpt from his testimony appearing on that page.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

Mr. KLEINDIENST. . . . I was a witness in that case. I testified in open court in the Federal District Court for the Southern District of New York. My testimony in that matter is a matter of open record. That case is on appeal and I believe that either as a lawyer or as an officer of the Department of Justice that it would be improper for me to comment in any way upon any aspect of that case because by doing so I might risk prejudicing the rights of the defendant in that case, either on appeal or in a retrial of the matter, if one comes about, or to prejudice the rights of the U.S. Government which was the plaintiff in that case.

I am, therefore, indicating to you in advance, Senator Bayh, that I will not make any comment or respond to any questions with respect to that matter; and if unfortunately, that leaves questions open with respect to my conduct as a Deputy Attorney General of the Department of Justice, then I will just have to run that risk because I think the rights of litigants in serious matters, such as this, that deal with their lives in criminal proceedings under our law, are more important than any interest in my favor which you might have to get a further extension of any comments from me about it. (p. 1710.)

Mr. HRUSKA. He did refuse to make any comment or to respond to any questions with respect to that matter; and he did it because he might be risking, as he says in his statement:

Prejudicing the rights of the defendant in that case, either on appeal or in a retrial of the matter, if one comes about, or to prejudice the rights of the U.S. Government, which was a plaintiff in that case.

Canons 1 and 7 of the Code of Professional Responsibility of the American Bar Association do forbid such comment, and disciplinary rule 1–102(A)(5) reads as follows:

A lawyer shall not engage in conduct that is prejudicial to the administration of justice.

I ask unanimous consent that disciplinary rule 7–107 be printed at this point in the RECORD.

There being no objection, the rule was ordered to be printed in the RECORD, as follows:

DISCIPLINARY RULE 7–107

"(B) A lawyer or law firm associated with the prosecution or defense of a criminal matter shall not, from the time of the filing of a complaint, information, or indictment, the issuance of an arrest warrant, or arrest until the commencement of the trial or disposition without trial, make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that relates to:

(1) the character, reputation, or prior criminal record of the accused.

* * * * *

(6) Any opinion as to the guilt or innocence of the accused, the evidence, or the merits of the case.

"(D) During the selection of a jury or the trial of a criminal matter, a lawyer or law firm associated with the prosecution or defense of a criminal matter shall not make or participate in making any extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that relates to the trial, parties, or issues in the trial or other matters that are reasonably likely to interfere with a fair trial, except that he may quote from or refer without comment to public records of the court in the case.

"(E) After the completion of a trial or disposition without trial of a criminal matter and prior to the imposition of sentence, a lawyer or law firm associated with the prosecution or defense shall not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by public communication and that is reasonably likely to affect the imposition of sentence.

"(I) The foregoing provisions of DR 7–107 do not preclude a lawyer from replying to charges of misconduct publicly made against him or from participating in the proceedings of legislative, administrative, or other investigative bodies."

Mr. HRUSKA. It is true that under subsection (I) of DR 7–107, the "no comment" rule is not binding in those situations in which an attorney is participating in the proceedings of legislative, administrative, or other investigative bodies. However, the reason for this exception is to accommodate the limited needs of these types of proceedings, not to permit an erosion of the main part of the rule by the device of communicating all the information to a legislative committee.

The foregoing disciplinary rules are applicable to attorneys of the Department of Justice. That is set forth in the American Bar Association opinions on professional ethics No. 199 (1940).

Recently, the Department promulgated regulations which substantially incorporate the principles embodied in DR 7–107, 28 C.F.R. 50.2 and following. Also Department of Justice Order 116–56 prohibits comment by Department attorneys on pending litigation in the Department.

Mr. HRUSKA. Furthermore, Mr. President, the Supreme Court repeatedly has decried any extra judicial comment that might prejudice a criminal trial.

There are several citations which I ask unanimous consent to have printed in the RECORD as well.

There being no objection, the citations were ordered to be printed in the RECORD, as follows:

Marshall v. *United States*, 360 U.S. 310 (1959); *Irwin* v. *Dowd*, 366 U.S. 717 (1961); *Rideau* v. *Louisiana*, 373 U.S. 723 (1963);

Estes v. *Texas*, 381 U.S. 532 (1965); *Sheppard* v. *Maxwell*, 384 U.S. 333 (1966).

Mr. HRUSKA. Mr. President, the reason I do this is that it would ill become the state of the record for any adverse conclusion or impression to be gathered by readers of the CONGRESSIONAL RECORD, or by any Member of this body, by reason of the fact that Mr. Kleindienst did not comment on that case and that he stated he was unwilling to answer any questions on it. The case, after all, is still pending. It is on appeal. There is a possibility of a retrial. The propriety or the impropriety of what Mr. Kleindienst did is a matter of public record. It was referred to at some length in the record during the trial and will stand close scrutiny.

There is much to what the Senator from Louisiana had to say in situations of that kind. There is much merit in the position he did describe, which is one which was taken by an earlier holder of the office of Deputy Attorney General.

It is for those reasons that I think this material is of benefit and would be enlightening to those who read the RECORD.

Mr. BAYH. Mr. President, will the Senator from Nebraska yield?

Mr. HRUSKA. I yield.

Mr. BAYH. Would the Senator define what part of the statement of the Senator from Louisiana he wishes to suggest has great merit? The suggestion that Mr. Kleindienst did not take a bribe? Is that the kind of thing we should place a great deal of emphasis on, that this should be the behavior above and beyond that normally expected of a public official?

Mr. HRUSKA. The Senator knows better than that. I am sure, upon review in his own mind, he would know better than that.

As I understand it, the position related by the Senator from Louisiana in a discussion with a former Attorney General, the former Attorney General said that if there was such a man-to-man colloquy or conversation, and one would say, "Yes, a bribe had been tendered," and the other would say, "No, a bribe had not been tendered," then so far as he was concerned, he would forget the whole thing, because it would not serve any useful purpose to get into a yes-or-no proposition.

I am not debating the merits of this kind of position. It is certainly an interesting point that was brought up by the Senator from Louisiana. But, at any rate, in view of that position, and in view of the discussions of the matter by the Senator from Indiana, it seems to me the type of material inserted in the RECORD by this Senator, is well worth considering for general enlightenment.

Mr. BAYH. I appreciate the fact that the Senator from Nebraska has put into the RECORD this information. I only rose to ask a question. I am not sure whether the Senator was here during the entire colloquy between the Senator from Louisiana and me.

Mr. HRUSKA. No, I was not. Frankly, no.

Mr. BAYH. The matter I did raise had been raised by the Senator from Louisiana and I did not want the Senator from Nebraska to endorse that particular part of the colloquy, unless he intended to. That is why I raised the question.

Mr. HRUSKA. I did not understand that part of the colloquy related by the Senator from Louisiana as trying to minimize any offer of a bribe being made to any officeholder. I did not understand his explanation of that situation to be that. The Senator from Indiana brought it up. I would not want to describe that kind of situation as being condonable or acceptable.

Mr. BAYH. The Senator from Louisiana said that he thought, if we are going to give Mr. Kliendienst bad marks for not recognizing a bribe, we should give him good marks for not taking a bribe.

Mr. HRUSKA. Good marks for one who describes that kind of effort in court as Mr. Kliendienst did. I think Mr. Kleindienst should have a lot of good marks. It is not easy to accuse and to follow through on an accusation of an attempt to bribe. It is not an easy task. It is not a pleasant task, particularly when the one accused is occupying an important position, as Carson did in the Senate. It is not an easy task to do. Mr. Kliendienst should get, and in my estimation he does get, a lot of good marks for doing what he did.

Mr. BAYH. In other words, this is beyond what we normally would expect of an Attorney General in terms of conduct and behavior? He should get an A-plus for his conduct here? That is, we should not expect the same from any other official? I believe that that should be the least we should expect from anyone in public office, to turn in someone who tries to bribe him—even if it is a week late—and to testify in court about it.

Mr. HRUSKA. I cannot say that that is a judgment that would stand scrutiny: that because a man does not take a bribe he should not get credit for it. How foolhardy to make a statement of that kind. Do I understand correctly the Senator from Indiana to say that?

Mr. BAYH. The Senator from Indiana is suggesting that we should not put someone at the head of the class because he could not be bought for $100,000. That should be the minimum we should expect from any of us. The Senator does not say that a man is qualified to be in high office simply because he will not take a bribe?

Mr. HRUSKA. Is it any ground for denying confirmation to high office of anyone when he does not take a bribe, when he comes forth and testifies as to that particular situation? That is the position of the Senator from Indiana. I cannot see the sense——

Mr. BAYH. No, no, no. That is not what I am saying at all. The Senator from Nebraska was not here during the entire colloquy. The matter that concerns me is that this conversation did take place. The Senator from Nebraska is aware of it, in which this gentleman sat down in Mr. Kleindienst's office and said that he had a friend in trouble and if he could fix a case that friend would make a contribution of $50,000 to $100,000 to the presidential campaign of President Nixon.

The Senator from Louisiana said he thought that was easily recognizable as a bribe. Does the Senator from Nebraska agree with that part of the statement of the Senator from Louisiana?

Mr. HRUSKA. I do not know what the first statement was. I will let the public record of Mr. Kleindienst's testimony on that speak for itself. The same should be true for the remarks of the Senator from Louisiana. I am not familiar with the record well enough to know whether the paraphrasing or the quotations of the Senator from Louisiana are whole, in context, or accurate.

Mr. BAYH. Will my friend from Nebraska let me read it to him? I shall be happy to do so.

Mr. HRUSKA. I shall be happy to have the Senator put that in the RECORD.

Mr. BAYH. I do not want my friend from Nebraska to be associated with any well-intentioned remarks that the Senator from Louisiana may have made while the Senator from Nebraska was off the floor. The conversation we had—let me read what happened, as follows:

> Mr. Carson sat down in a chair in front of my desk and said that he had a friend in New York who was in trouble, and that if I could help him with respect to his trouble, his friend was a man of substantial means and would be willing to make a substantial contribution of between 50 and 100 thousand dollars to the reelection of President Nixon.

The Senator from Louisiana said that was easily recognizable as a bribe. Inasmuch as the Senator from Nebraska said there was a great deal to recommend the position of the Senator from Indiana, I wondered if he concurred in that assessment of Mr. Carson's offer in Mr. Kleindienst's office.

Mr. HRUSKA. The testimony of Mr. Kleindienst and his conclusion as to what it was is pretty convincing. I would like to let it rest at that.

Mr. BAYH. Then the Senator from Nebraska does not agree with the assessment of the Senator from Louisiana that this is recognizable as a bribe?

Mr. HRUSKA. I did not indicate any personal conclusion. The witness testified in that case and it was his judgment that it was bribery and from all appearances in the testimony just read it would be. But I was not present; I have no firsthand knowledge of the facts. I am not in a position to judge. And I do not know that my conclusion would have any great weight one way or the other. It was the considered judgment, however, not only of Mr. Kleindienst but also of the jury and of the judge, that it was bribery. I think that is sufficient and I would find no reason to quarrel with that conclusion.

Mr. BAYH. Therein lies a little concern that apparently I have that the Senator from Nebraska does not have, because the record will show, and I can dig it out and read it to the Senator so that there is no misinterpretation of it, that the man now designated as the Deputy Attorney General, when presented with this proposition, and for a week thereafter, did not think it was a bribe. The Senator from Louisiana said he could recognize it as a bribe. It sounds like a bribe to me.

I do not know whether the Senator

from Nebraska would know that it was rather obvious that this was an attempt to bribe a public official. But the Attorney General designee—when he was first presented with this and, later when he testified in court—said that he did not think it was a bribe for a full week.

Mr. HRUSKA. He did testify on it and he presented it in his testimony in open court. I do not know why the Senator wants to hold it against a man who engages in that conversation and then comes out and says in court, "Yes, this is what happened."

He testified in court in a case involving a bribery charge which was asserted and proved. What is wrong with that? I see nothing but plus points in a situation of that kind.

Mr. BAYH. I think we are talking about placing a man in a very high office with very great responsibility, where his judgment as to when to prosecute a case and when to ask a U.S. attorney or a lower official in the Justice Department to convene a grand jury or seek an indictment for a crime are most important. All of these matters involve a great deal of discrimination involving the Department of Justice as to when a case is pursued and when it is not.

It seems to me that to give the background of the case and just to embellish on it a bit, I point out that he was asked this question:

It is true then, is it not, that on November 24, 1970 . . .

That is the date that I related in the conversation in the office. The question was:

On November 24, 1970, you did not regard that, in the conversation you had with Mr. Carson, that he had offered you a bribe?

Mr. KLEINDIENST. No, I did not.

QUESTION. If you did regard that conversation as containing a bribe offer, you would have immediately reported it, would you not?

ANSWER. Yes, sir. I would have.

The fact is that it went on for a whole week and Mr. Kleindienst did not consider it as a bribe and did not report it to the Attorney General until a week later when he did learn inadvertently that the FBI was going to put a bug on Mr. Carson.

I am very concerned about that. I am not alleging that Mr. Kleindienst knew anything different than what he said by his own words. He did not recognize that as a bribe.

I must say that if someone were to come into my office or into the office of the Senator from Nebraska with such a proposition, we would recognize it as a bribe pretty quickly.

Mr. HRUSKA. I am sure that is correct. However, the record is there in full. The record will show that the conversation was a very brief one. And as soon as Mr. Kleindienst learned that it was a man who was already indicted that was involved, he said. "That is the end of the conversation."

The whole record is there.

On the other hand, the Senator from Indiana is welcome to engage and indulge in any inferences he wants. However, any reasonable-minded man could read the entire record and the events which transpired later and would find nothing on which to hang his hat as a basis for criticism of Mr. Kleindienst.

Mr. BAYH. Well, he didn't say, "that was the end of the conversation." They went on to talk about individual appointments and other matters. I hope that everyone in the Senate will read the material which the Senator from Nebraska had placed in the RECORD in an attempt to explain the refusal of Mr. Kleindienst to answer the questions asked of him by the Senator from Indiana.

There is no precedent whatever for his refusal. There is nothing in the record to satisfactorily explain away the refusal or to explain the fact that the Acting Attorney General in responding to that question did distort the issue and say it would prejudice the Government's case.

It is rather ridiculous. How in the world could the Acting Attorney General prejudice the court case? One has only to look at the record. There has never been any explanation of how it would prejudice a jury if one had been called at a future time. This was a crutch used later by the Acting Attorney General to explain away a very embarrassing situation for which, in my judgment, there is no explanation.

Mr. HRUSKA. Mr. President, all I would like to say with respect to Mr. Kleindienst's position is that we have canons of judicial conduct and we have the canons of the American Bar Association which are set forth in the material I have put in the RECORD. We have Department regulations by which it is provided that no comment should be made on pending litigation. It would appear that the nominee was acting properly by this refusal.

The Senator from Nebraska says that prejudice could flow from it. This Senator says that he would be breaking the canons of the American Bar Association and the canons of judicial conduct and the Department regulations if he had done it. He would be subject to criticism by any Member of the Senate who could say, "Why did you break your own regulations? You have commented on litigation that is pending. The regulations say you should not do it."

What is a man to do under those circumstances in the almost cavalier suggestion of prejudice that could follow his testimony on the subject? What is a man to do?

Mr. BAYH. Would the Senator from Nebraska care to advise the Senator from Indiana why it is that the now Attorney General designee was so scrupulous in adhering to the Department doctrine and the ABA counsel on this particular case, when the man is before the Senate committee and is on television before the Nation, when he had in the case of the May Day arrests violated the very canons he is now seeking to hide behind.

Mr. HRUSKA. On the May Day arrests?

Mr. BAYH. Of Course. He did not hesitate to tell everyone what his opinion was on that. He was the No. 2 prosecutor in the Nation, and yet he was revealing the facts on this affair in violation of the same doctrine he is now trying to hide behind.

Mr. HRUSKA. This is a new area and I do not have all of the facts at my fingertips. However, I see a few distinguishing factors. The U.S. Government was not a party. It was the District of Columbia that was a party, according to my recollection. At the time of the statements, immediately following the riot, there were no cases pending, there was no appeal pending. Additionally, the nominee was not directly involved in these cases and could in no way know he would later be called as a witness. That situation of the May Day cases did not fall within the purview of the rules.

Mr. BAYH. The District of Columbia is a direct adjunct of the U.S. Government. It is not like the State of Indiana. He was a witness in the May Day case as well.

Could the Senator from Nebraska give me chapter and verse from the Department of Justice edict or anything else that discriminates between the two cases? They seem to be similar. In one of them he violated the edict. Yet, in the other case he is very clear in describing what he thought would be a violation of that edict.

Mr. HRUSKA. I suggest the posture of the two cases and Mr. Kleindienst's participation in them are quite different.

The question was raised by the Senator from Indiana on page 1710 of the hearings whether it would not be a little bit inconsistent to treat one case in one way and another in another way.

And the nominee said:

And with respect to the May Day cases, I don't believe that there are any appeals that are in existence with respect to any verdict of guilty that came about as a result of the conduct of any of the alleged defendants in that case.

He discussed it on that basis. It is a good and valid distinction.

Mr. BAYH. If the Senator from Nebraska would care to have me present the matter on Monday—I do not have it here today—I could present the case of James Buckley, who was one of the men involved in the May Day protest and was picked up off the street and was brought into court. Mr. Kleindienst was a witness. He was a witness in the case of Buckley against U.S.—unreported—Criminal No. 2216471 A–B; U.S. attorneys Louie Moore and Charles Work, prosecuting.

He might have said—on page 1710 of the record of the hearings—that he was not a witness, but again, the facts contradict his assertion. The case was on July 9, 1971.

Mr. HRUSKA. Maybe so. This is what he testified:

That was a little different situation, Senator Bayh. You are dealing with misdemeanors on the one hand, in the other circumstances you are dealing with very serious charges—conviction of a felony, an appeal, the possibility of another trial; and if I am in error on this, Senator Bayh, then I will have to accept the responsibility for that error. I am not going to respond to questions with respect to that matter even if by refusing to it results in a detriment to myself.

He was acting in a thoroughly dignified, professional fashion in what he did and in a fashion commensurate with the high office of Attorney General.

Mr. BAYH. In other words, referring to action commensurate with the high office of Attorney General, first, it is all right for the Deputy Attorney General to violate an American Bar Association canon and to violate a departmental doctrine if we are only dealing with misdemeanors, but the same is not true with respect to felonies. In other words, a man can set a double standard for himself.

Mr. HRUSKA. I would respectfully suggest that to put this matter in the language the Senator suggests begs the question. He did not break the rule, and there is a distinction between these cases.

Mr. BAYH. Quite to the contrary, if there is such a rule, he broke it. I am not, however, persuaded that the rule relied upon by my friend from Nebraska, although I am sure he is sincere in presenting his case, is entirely applicable to the case in point.

How does one explain the refusal of Mr. Kleindienst to answer the question of the Senator from Indiana on the Carson case, which is strikingly similar to the circumstance, relative to the gentleman I referred to in the May Day case. One involves a misdemeanor and the other involves a felony.

Mr. HRUSKA. I repeat that the Senator from Indiana is free to indulge in any interpretation he wishes to on this matter. For the purpose of this record and the debate, however, all the material is there and each of the 100 Members of this body can have access to that material and apply his own conclusions.

Mr. BAYH. Mr. President, I know every Member of this body is going to make his own determination after giving the matter a great deal of the kind of consideration that is required. It is not beyond reason to suggest that my friend from Nebraska could look at the same facts as the Senator from Indiana and reach a different conclusion, but I think it is important for us to realize what these facts are.

It seems to me the facts of the case are indisputable.

Mr. President, the facts are similar enough for us to consider whether he is setting a double standard of justice or not. There is no question that the American Bar Association has a canon denying attorneys from saying or doing something that would prohibit justice from being meted out. There is no question about the need for officials in high places to keep from making statements that might prejudice cases—particularly cases in which they have been involved.

Mr. President, I ask unanimous consent to have printed in the RECORD cases which might be of help to the Senators in pursuing what prejudice really means under the law.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

APPENDIX B—SUMMARY OF THE MAJOR DECISIONS OF THE U.S. SUPREME COURT

Marshall v. *United States*, 360 U.S. 310, 3 L. Ed. 2d 1250, 79 S. Ct. 1711 (1959).

Defendant was convicted of unlawfully dispensing dextro amphetamine sulfate tablets without a prescription from a licensed physician. The government proposed to prove that defendant had previously practiced medicine without a license. Such evidence was ruled inadmissible but during trial two newspapers published accounts which recited that Marshall had practiced medicine without a license and had been convicted of forgery. The seven jurors who had seen all or portions of the news articles swore that they would not be influenced by them, that they could decide the case only upon the evidence of record, and that they felt no prejudice against petitioner as a result of the articles. Despite the testimony of the jurors, which under earlier rulings would have been sufficient to show impartiality, the case was reversed and sent back for new trial because the jurors were exposed to the inadmissible evidence through the news articles.

Janko v. United States, 366 U.S. 716, 6 L. Ed. 2d 846, 81 S. Ct. 1662.

The Supreme Court reversed in a per curiam memorandum decision without opinion. The case below is reported at 281 F. 2d 156 (CA 8 1960). Janko was found guilty of willfully attempting to evade income tax for three years by improperly claiming two of his own minor children as dependents. The tax amounts involved were 134.00 for 1954 and $264.00 for each of the years 1955 and 1956. Although divorced, Janko contributed certain sums to the support of his children; but he was charged with willful evasion on the theory that he had not contributed more than one-half of each child's support. The first trial ended in conviction but a new trial was granted when four members of the jury admitted that they had read or had been apprised of prejudicial newspaper articles. During the second trial a local newspaper published an article with reference to the defendant as a former employee of East Side rackets boss Frank (Buster) Wortman and as a former convict who was found guilty in January in the same case but was granted a new trial when four jurors acknowledged that they had read newspaper accounts of the charges against him. After the verdict the jurors were asked en masse whether they were persuaded or influenced by anything other than testimony in the Courtroom during the trial and none responded.

The case was similar to *Marshall* in that inadmissible evidence was published during the trial. Presumably the Supreme Court thought the case was covered by the decision in *Marshall* and no opinion was published.

Irvin v. Dowd. 366 U.S. 717, 6 L. Ed. 2d 751, 81 S. Ct. 1639 (1961).

Six murders were committed in the vicinity of Evansville, Indiana, between December, 1954, and March, 1955. Defendant was arrested April 8, 1955, and shortly thereafter police officers issued press releases which were intensively publicized stating that defendant had confessed to the six murders. Defendant sought a change of venue which was granted but only to the adjoining county. Defendant then sought a further change of venue because of widespread and inflammatory publicity which he claimed had prejudiced the inhabitants of that county. The second change of venue was denied. After the conviction was affirmed by the Indiana Supreme Court, defendant brought this habeas corpus proceeding. Although the court recited the ancient rule that,

"It is sufficient if the juror can lay aside his impression or opinion and render a verdict based on the evidence presented in court. . . ." (At p. 723)

It went on to say that such a rule does not close inquiry as to whether in a given case the application of the rule deprives a defendant of due process of law. As a result of the barrage of publicity eight jurors thought defendant guilty. The court found prejudice established despite the jurors' statements that they would be fair and impartial.

"With such an opinion permeating their minds it would be difficult to say that each could exclude this preconception of guilt from his deliberations. . . . Where so many, so many times, admitted prejudice, such a statement of impartiality can be given little weight. . . ." (At p. 727)

The court already abandoned any belief that a juror exposed to prejudicial publicity is proven impartial by his declaration that he will not allow such evidence to influence him.

"The influence that lurks in an opinion once formed is so persistent that it unconsciously fights detachment from the mental process of the average man. . . ." (At p. 727)

Rideau v. *Louisiana*, 373 U.S. 723, 10 L.Ed. 2d 663, 83 S. Ct. 1417 (1963).

The day following his arrest the defendant was interviewed by the Sheriff concerning a robbery and murder. Defendant was not represented by counsel nor advised of his rights. The interview which was televised on three consecutive days was characterized by the Supreme Court as a kangaroo trial presided over by a Sheriff with no attorney to advise Rideau of his right to remain mute. The court said it was not necessary to examine the transcript of the examination of the jury to hold that due process required a trial before a jury drawn from a community of people who had not seen and heard Rideau's televised interview. Denial of change of venue was held error. Justices Clark and Harlan dissented on the grounds that it was not shown that adverse publicity had fatally infected the trial two months after the televised interview. This was the first case in which it was clearly held that denial of due process may result from prejudicial publicity even in the absence of any showing of actual prejudice by particular jurors as a result of such publicity.

Estes v. *Texas*, 381 U.S. 532, 14 L.Ed. 2d 543 85 S. Ct. 1628 (1965).

Conviction for swindling was reversed as a result of televising of the two day preliminary hearing and part of the trial. "No isolatable prejudice" was shown but the court held that in some cases actual prejudice is not a prerequisite to reversal.

Sheppard v. *Maxwell*, 384 U.S. 333, 16 L. Ed. 2d 600, 86 S. Ct. 1507 (1966).

Defendant's wife was bludgeoned to death July 4, 1954, in the upstairs bedroom of the home. Defendant claimed that he was dozing on the couch in the living room when he heard his wife cry, rushed upstairs, grappled with a "form" and was rendered unconscious. The court recites in detail the massive buildup of publicity culminating in front page editorials demanding the arrest of the defendant which occurred promptly thereafter on July 30. The publicity then grew in intensity until indictment August 17. Clippings from three Cleveland newspapers covering the period from the murder until conviction in December, 1954, filled five volumes. At the trial representatives of television, newspapers and radio stations completely filled the Courtroom except for a few seats in the last row. Defendant, the attorneys, witnesses and the jurors were constantly exposed to the news media. As a result of publication of names and addresses of jurors, anonymous letters, and telephone calls were received by all prospective jurors.

The Supreme Court indicated that the burden of showing essential unfairness as a demonstrative reality need not be undertaken in cases with such massive and pervasive publicity. The trial court had refused a request to interrogate the jurors as to whether they had read or heard specific prejudicial comment about the case, but the Supreme Court said that ". . . In these circumstances, we can assume that some of this

material reached members of the jury. . . ." (At p. 358).

The *Sheppard* case is another landmark decision because the Supreme Court there enunciated specific suggestions as to what should be done to avoid the effects of prejudicial publicity. The Supreme Court said that the trial court should have limited the number of members of the news media in the Courtroom; should have insulated the witnesses (who though barred from the courtroom during trial had available to them from the news media the full verbatim testimony of other witnesses); should have made efforts to control the release of information by police officers, witnesses and counsel for both sides; should have warned the newspapers to check the accuracy of their accounts; should have proscribed extra judicial statements by any lawyer, party, witness or court official concerning refusal to submit to lie detector tests, any statement by the defendant, the identity and credibility of prospective witnesses, belief in guilt or innocence or like statements concerning the merits of the case; should have requested City and County officials to promulgate regulations with respect to dissemination of information about the case by their employees; and reporters should have been warned as to the impropriety of publishing material not introduced in the proceeding.

Finally, trial judges were instructed that where there is a reasonable likelihood that prejudicial news will prevent a fair trial, the judge should continue the case or transfer it to another County, consider sequestration of the jury, and grant a new trial if publicity during the proceedings threatens the fairness of the trial. Collaboration between counsel and press as to information affecting the fairness of a criminal trial was said to be not only subject to regulation but highly censorable and worthy of disciplinary measures.

Mr. BAYH. Mr. President, this prejudice is prejudice that involves making statements that might inflame or impassion the people of the community that are then asked to sit on a jury. Quite naturally, if they read headlines attributed to officials, prosecuting officials, law enforcement officials, U.S. Senators, whatever it might be, it might be difficult to get a jury to do justice on a case. But I must say no case has even been brought to my attention where a mere explanation, a mere response in a Senate hearing, such as that I sought to elicit from the Attorney General designate has ever been described to fall in this category of prejudice.

That is not the kind of thing we are talking about. Here is a man who testified of his own volition in open court. He had already stated what happened. The only thing I wanted to find out was not a further embellishment of what happened vis-a-vis the Acting Attorney General and the defendant; I wanted to know why it was that such an obvious effort to bribe one of the highest officials in this land was not recognized for the bribe it was. The Senator from Louisiana said what he thought it was—a bribe. I do not want to put words in the mouth of the Senator from Nebraska, but he would let the words of the Attorney General stand for themselves. I just want to know why. Is the Attorney General-designate just to go stone cold and look down that gun barrel, as if we have offended some holy rule by asking a question like that, and refusing to tell us why for a whole week, why an obvious bribe was not recognized as a bribe. This goes to the man's judgment and that is why I asked the question in the hearings.

I think that this is just like the Steward case that has been referred to frequently, which was an effort of the Attorney General to say that nothing was wrong when his own department said there was wrongdoing. This is something that goes to the man's character and some might say, to his honesty. Someone could make that judgment. If a man goes to his office and offers $100,000 for fixing a case and he does not recognize it as a bribe, I would not want that man sitting in judgment of whether a grand jury was going to be impaneled or whether a case was going to be appealed or whether an antitrust case is going to be pursued or not, or whether an alleged crime is to be prosecuted.

Mr. HRUSKA. Mr. President, will the Senator yield?

Mr. BAYH. I yield.

Mr. HRUSKA. I would suggest this. After all, if these questions occur so readily to the Senator from Indiana, is it not reasonable to assume these questions occurred to defense counsel in the Carson case? I believe so. I believe they did occur to the counsel for the defense and Mr. Kleindienst was asked pointed questions and followup questions on that point. He answered the questions and explained the very circumstances which the Senator from Indiana is now inquiring about. It is a matter of public record. It would be so simple to get that court transcript and place it in the RECORD.

Mr. BAYH. I will be glad to. I ask unanimous consent to insert that portion of the transcript containing Mr. Kleindienst's testimony into the RECORD.

There being no objection, the transcript was ordered to be printed in the RECORD, as follows:

CARSON TRANSCRIPT

Richard G. Kleindienst, called on behalf of the Government, having first been duly sworn, testified as follows:

Mr. MORVILLO. May I inquire, your Honor?

The COURT. Yes.

DIRECT EXAMINATION

By Mr. Morvillo:

Q. Mr. Kleindienst, by whom are you employed?

A. I am employed by the United States of America in the Department of Justice.

Q. In what capacity are you so employed?

A. I am the Deputy Attorney General of the United States.

Q. And how long have you been so employed?

A. Since January 29, 1969 I believe is the date.

Q. Will you tell the court and jury what your functions are, generally, as the Deputy Attorney General of the United States?

A. The Deputy Attorney General is the so-called number two man in the Department of Justice. I answer directly to the Attorney General of the United States.

Generally speaking, my job is to see to it that the policies and programs of the president and the attorney general are effectuated by the personnel of the Department of Justice.

Q. Do you know an individual by the name of Robert Carson?

A. Yes, I do.

Q. And how long have you known Mr. Carson?

A. Well, I have known him quite a while, since the spring of 1968. I might have met him casually prior to that time, but at least as of the spring of 1968, quite well.

Q. Now, calling your attention to the spring of 1968, in what context did you meet Mr. Carson?

A. I met Mr. Carson in Senator Fong's office, in the early spring of 1968 in connection with the discharge of my responsibilities as the National Director of Field Operations of the Nixon for President Committee.

I had visited Senator Fong for the purpose of discussing with him his participation——

Mr. BRILL. I object to that, if your Honor please.

The COURT. Sustained. We will exclude it.

A. (Continuing) As a result of that visit that I had with Senator Fong, I met Mr. Carson and talked to him in his office, in Senator Fong's office.

Q. Now, after you became Deputy Attorney General of the United States, did you have any contact with Mr. Carson?

A. Several times I did.

Q. Will you tell the court and jury what types of contacts you had with Mr. Carson after you became Deputy Attorney General of the United States?

A. The Department of Justice had a continuing association with Senator Fong, as it did with other senators, in connection with the appointment of federal judges, either in the Ninth Circuit, or the State of Hawaii; the appointment of a United States Attorney for the State of Hawaii and the appointment of a United States Marshal for the State of Hawaii.

And then I also had contacts with Mr. Carson and Senator Fong's office in connection with just other matters, and then I had contacts with Mr. Carson as a result of the fact that he was President of the Administrative Assistants' Association for the United States Senate; and then I would occasionally run into Mr. Carson and his wife with my wife at a variety of social functions in the District of Columbia.

Q. Now, excluding the social functions that you have just talked about, where on the occasions that you had contact with Mr. Carson, what types of contact would they be? Would they be in person or by telephone?

A. They would be both, either in person or by telephone. If I was in Senator Fong's office, I usually would stop by in Mr. Carson's office when I visited Senator Fong; they could be in person when I met him socially, they could be in person when I attended functions of the Administrative Assistants' Association of the United States Senate, and then quite frequently by telephone.

Q. Prior to November 24, 1970, had Mr. Carson ever visited you in your office?

A. Not to my recollection.

Q. Prior to November 23, 1970, had he ever requested a personal appointment with you in your office?

A. Not that I recollect.

Q. On the few occasions, or on the occasions when you had met Mr. Carson prior to November 23 and November 24, 1970, who usually initiated those contacts, you or Mr. Carson?

A. Well, I would think that both of us could have. And as to who initiated the most, I couldn't say.

Q. Now, calling your attention to November 23, 1970, did you talk with Mr. Carson on that day?

A. I did.

Q. Now, by the way, what communication facility did you employ?

A. Mr. Carson called me in my office by telephone.

Q. Will you state to the court and jury what Mr. Carson said to you and what you said to Mr. Carson on November 23, 1970.

A. My recollection of the substance is that

Mr. Carson wanted to talk to me, and because I had talked to him several times on the phone before, I asked him whether or not we could not talk about the subject matter over the telephone, and I recollect that he said no, he would prefer to come to my office. And I looked at my appointment calendar and told him that I could see him at ten o'clock the next day, if that was convenient for him, and I believe that he said that it was convenient for him.

Q. Calling your attention to November 24, 1970, around ten o'clock in the morning, did you see Mr. Carson?

A. Yes, I did.

Q. Where were you?

A. I was in my office, and he came into my office, the Department of Justice.

Q. Now, would you tell the court and jury what Mr. Carson said to you and what you said to him on November 24, 1970?

A. Well, after we had exchanged pleasantries, Mr. Carson sat down in a chair in front of my desk and said that he had a friend in New York who was in trouble, and that if I could help him with respect to his trouble, his friend was a man of substantial means and would be willing to make a substantial contribution of between fifty and one hundred thousand dollars to the reelection of President Nixon.

I asked him what kind of trouble this man had. Mr. Carson said that he was under indictment for federal offenses, and I said that under no circumstances could I do anything about the matter, even look into it, as a result of the fact that a grand jury had returned an indictment.

That was just about all the conversation that existed.

We immediately thereafter—we turned the subject matter to other matters, exactly what I don't recall, but very possibly matters involving the State of Hawaii and appointments pertaining to the Department of Justice.

Mr. Carson very soon thereafter got up to leave, and just as he left he handed me a xerox copy of an announcement indicating that he had been reelected President of the Administrative Assistants' Association, and left.

Q. Now, Mr. Kleindienst, did there come a time when you reported the substance of this conversation to the Attorney General of the United States?

A. Yes, I did.

Q. When was that?

A. That was approximately nine o'clock in the morning, one week later, on Tuesday, December 1st.

Q. And what occasioned the report to the Attorney General?

A. I had not seen the Attorney General——

Mr. BRILL. I object to that.

The COURT. Pardon?

Mr. BRILL. I object to that.

The COURT. Why should I receive it, Mr. Morvillo?

Mr. MORVILLO. I will withdraw it and ask another question.

The COURT. All right.

By Mr. Morvillo:

Q. Between November 24th and December 1st, did you see the Attorney General?

A. I did not.

Q. And was December 1st the first time that you saw the Attorney General after you had spoken to Mr. Carson?

A. Yes, it was.

Mr. MORVILLO. I have no further questions, your Honor.

CROSS EXAMINATION

By Mr. Brill:

Q. Mr. Kleindienst, my name is Brill; I represent Mr. Carson.

A. Yes, sir?

Q. We have never met or talked before, have we?

A. Is the question, have you and I met before?

Q. Yes.

A. No, sir.

Q. And we have never talked to each other?

A. No, sir.

Q. Would it be fair to say that you are a political appointee?

A. I am a political appointee.

Q. Were you one of the pre-Convention Nixon workers?

A. Yes.

Q. Pre-1968?

A. Yes, I was the National Director of Field Operations for his election campaign committee, and my responsibility was to work in putting together a national organization calculated to get the delegates for President Nixon's nomination by the Republican Party.

Q. And in connection with that activity you worked very closely with Mr. Carson, did you not?

A. Yes, I did.

Q. You saw him frequently?

A. Yes, sir.

Q. Practically on a daily basis?

A. No, I wouldn't say that.

Q. Well, throughout the pre-Convention campaign, seeking Nixon delegates, you had many and frequent contacts with Mr. Carson, did you not?

A. I had many contacts with him, Mr. Brill, but the frequency of which I just could not recall, but—

Q. Well, I wouldn't expect you to remember the exact number; that would be a humanly impossible thing.

A. There were fifty states and Hawaii was one of them. Senator Fong was a Regional Director for the Nixon for President Committee, so I would have seen both Senator Fong and Mr. Carson more frequently than I would just a representative of a particular state.

Q. In the course of your own activities, you have been a political fund raiser, haven't you?

A. No, sir; I have not been.

Q. Were you not at one time a candidate for public office yourself?

A. Well, I was the Republican nominee for Governor of the State of Arizona in 1964.

Q. And in that same year were you not also a field director for the Goldwater for President campaign?

A. I had essentially the same responsibility for Goldwater's campaign up to the Convention as I did for President Nixon.

Q. You were working to get delegates?

A. Yes. I had the same job and the same title.

Q. By the way, during the course of the Convention, did you and your wife have occasion to take a picture, or have a picture taken of yourselves with Mr. Carson, to your recollection?

A. I could have, but I have no personal recollection of that, Mr. Brill.

Mr. BRILL. Will you mark this for identification, please.

(Marked Defendant's Exhibit I for identification.)

Q. I show you, Mr. Kleindienst, Defendant's Exhibit I for identification, and ask you if it refreshes your recollection as to whether you and your wife, together with Mr. Carson, had your picture taken?

A. It certainly does.

Q. And was that during the Republican Convention of 1968?

A. Well, I am not certain. The interior of the room looks as if it could have been a room in the hotel where I was staying at Miami Beach.

Q. Was it the Nixon headquarters suite?

A. That is what I think it is, because of the decor, the modern decor of the hotel room.

Mr. BRILL. Thank you.

I offer it in evidence.

Mr. MORVILLO. No objection, your Honor.

(Defendant's Exhibit I for identification received in evidence.)

Mr. BRILL. May I pass it to the jury?

The COURT. Yes.

(Defendant's Exhibit I handed to jury.)

By Mr. Brill:

Q. Just skipping in point of time for a moment, Mr. Kleindienst, is it true that on the occasion of one of your wedding anniversaries, you invited Mr. Carson and his wife to your home?

A. I don't believe so, Mr. Brill. My wedding anniversary is September 3rd and I don't believe I have had a wedding anniversary party at my home since I have been married.

Q. Was it a birthday party?

A. It could have been a birthday party for my wife. We had one such party like that since we have been in Washington, and that was a year ago, around March 3rd, and that was a surprise party given by my wife—for my wife, at the home of Judge Revercomb, and Mr. and Mrs. Carson could have been invited, but I do not recollect that they were.

Q. And it was you who extended the invitation?

A. I could have, Mr. Brill, but I don't recollect it.

Q. Wasn't it an occasion on which you went to the airport to meet your wife and then bring her to the party?

Mr. MORVILLO. I object, your Honor. It is irrelevant.

The COURT. No, I will allow it.

A. I have no recollection of that, Mr. Brill, but, like I say, it could have occurred.

Q. Was there an anniversary or some other kind of party in honor of yourself and Mrs. Kleindienst given at Senator Goldwater's apartment to which Mr. and Mrs. Carson were invited?

A. No such party for me. I have attended functions at Senator Goldwater's apartment but I don't recall Senator Goldwater ever having a party for me.

Q. I am not suggesting that it was Senator Goldwater who gave the party; I am suggesting that there was a party at Senator Goldwater's apartment.

A. That could have occurred in 1968. I was living in Washington, D.C., a portion of the time, away from my family, and my wife did come back and visit me on two occasions, and I now recollect that there was a party that we had at Senator Goldwater's apartment where I was living, at which my wife was present.

I am trying to recollect whether Mr. Carson was there or not, but he very well could have been, and I very well could have invited him to be there.

Q. You knew Mr. Carson to be a political fund raiser, did you not?

A. Yes—I did not think of him primarily as a political fund raiser, but I do believe I knew that he had been engaged in raising money for political campaigns.

Q. Right?

A. Yes.

Q. For President Nixon as well as for Senator Fong?

A. I believe so. I know for President Nixon, and I presume for Senator Fong.

Q. And I think you told us that you knew he was President of the Administrative Assistants' Association?

A. Yes.

Q. And that he furnished you with a copy of the release which was issued at or about the time of his election to that office?

A. I believe it was his reelection to that office.

Q. Reelection to that office?

A. Yes, sir; that is when he was in my office on the 24th of November.

Mr. BRILL. Would there be any objection to my separating one of the sheets of 3529 for identification?

Mr. MORVILLO. No, I don't think so.

Mr. BRILL. Would your Honor indulge me, please?

The COURT. Yes.

Mr. BRILL. Will you mark this for identification, please.

(Marked Defendant's Exhibit J for identification)

Q. Mr. Kleindienst, I show you Exhibit J for identification, which I have just withdrawn from Exhibit 3529 for identification, which was furnished by the government in accordance with its obligations, and ask you if that is the release to which you refer?

A. No, it is not. What I recall—it might be—

The COURT. That is an answer, Mr. Kleindienst.

Q. Have you seen that release?

A. I don't know. I don't believe this is what he showed me. What he showed me I thought had a picture on it, but this could be; I am not sure.

Q. Have you seen that release?

A. I can't recollect, Mr. Brill.

Q. Well, did you at some subsequent time furnish either to agents of the FBI or to anyone else in the Department of Justice this document which is now known as Defendant's Exhibit J for identification?

A. I don't recollect whether it was this document, Mr. Brill. I did furnish to a representative of the FBI a document that indicated that Mr. Carson had been reelected President of this Association. It might have been this document.

Q. There is some doubt in your mind as to whether or not it was?

A. I don't recollect reading that particular document and giving that particular document to the FBI. I did give them a document, however.

Q. Did you give it to Mr. Peterson, Henry Peterson?

A. I believe I did.

Q. And is this the document you gave to Mr. Peterson?

A. I cannot recollect. That is the same document you had handed me, isn't it?

Q. Yes, it is still Exhibit J for identification.

A. It could have been, Mr. Brill, but I don't recollect whether that is the exact document.

Q. Now I invite your attention to the last paragraph of Exhibit 3529 and ask you if looking at it refreshes your recollection that Exhibit J is the document that you gave to Mr. Peterson?

A. Well, I recollect, Mr. Brill, the fact that Mr. Carson gave me a document. He stated what it was. I didn't read it, and whether this is the document or not, I do not recall. It could very well be, Mr. Brill.

Q. Does looking at the last paragraph of the exhibit for identification which I have just handed you refresh your recollection in that regard?

A. It doesn't refresh my recollection that this is the exact document. It does that he did give me a document.

Q. Now will you be good enough to look at the document and tell us whether reading it refreshes your recollection that it is the document that he gave you?

A. It doesn't help me, Mr. Brill, because I don't recall having read it at the time.

Q. Now in the description that you gave to the chief prosecutor with respect to your duties at the Department of Justice, you made no reference to your responsibilities for recommending candidates for appointment to the office of Federal Judge—District Judge, United States Circuit Judge, Associate Justice of the Supreme Court of the United States, United States Attorneys or United States Marshals, did you?

A. No, I did not.

Q. But that does come within the scope of your responsibility?

A. That specifically except the function with respect to Associate Justices of the United States Supreme Court.

Q. Exclusive of Justices of the High Court, then, you are responsible for making recommendations to the president through the attorney general for appointments to the federal judiciary, both the District Court and the Circuit Court, United States Attorneys and United States Marshals, is that correct?

A. Yes, that is a function of the office of Deputy Attorney General.

Q. And you are the functionary in that office?

A. Yes, I am.

Q. Now, the subject matter of appointments to any of those positions concerning which you have responsibility for recommendation is a matter of discretion between yourself and all of the 100 senators who represent the fifty states of this country, is it not?

A. Not necessarily all, Mr. Brill. It is at least with respect to all of the Republican senators. In most cases where you have a President of one party and a Congress of another, by custom the senators of the other party very seldom inject themselves directly into Federal judgeship matters; but certainly, all of the senators of your own party do.

I have had conferences with many Democratic senators, but not all of them. I have talked to all Republican senators about these appointments.

Q. That is, in the normal course of the activity of the operations of Government?

A. Yes, sir, and particularly the first year of a new administration because you have so many new appointments.

Q. And in connection with that activity, is it not customary also to deal with the administrative assistant to the particular senator concerned when the senator himself may not be available?

A. It certainly is.

Q. And in that regard, you had occasion to talk with Mr. Carson concerning such appointments in which the State of Hawaii was interested?

Q. By the way, Mr. Kleindienst, since you took office in January of 1965, have you maintained a daily log or diary in connection with your functions as deputy—1969; I beg your pardon—Deputy Attorney General?

A. I maintain a daily log that sets forth my appointments each day.

Q. Does that log reflect the nature of the conversation or discussion had?

A. No, sir.

Q. In October, November and December of 1970, did you maintain such a log?

A. Yes, sir, I did.

Q. In addition to such a log as you have described, did you during that period record telephone conversations?

A. No, sir.

Q. Did anyone in your offices order or monitor any of your telephone conversations?

A. No, sir, not to my knowledge.

Q. And certainly not with your permission?

A. No, sir.

Q. Have you seen any transcript of any telephone conversation to which you were a party in October and November or December of 1970?

A. No, sir.

Q. Have you seen or heard, rather, any recording of any kind with respect to any telephone conversation that you had in October, November and December of 1970?

A. No, sir.

Q. Was a log of incoming and outgoing, or outgoing, telephone calls made by anyone in your office?

A. By a log—

Q. During that same period.

A. By a log do you mean a notation with respect to who called me or calls that I made out?

Q. Yes.

A. October, November and December of 1970, not to my knowledge.

Q. And you have not seen any up to this time?

A. No, sir.

Q. Now, what record, if there is any at all, is kept of any incoming conversation or telephone call to you?

A. I don't believe that there is any record kept, Mr. Brill. I have three secretaries, I do not believe that any of them make a notation as to a person who calls me and the time that they call me. I do not believe that they do it. If they do it it is not because I have instructed them to do it.

Q. And you have not seen any record of any call within such category during that period?

A. October, November and December, no.

Q. Have you made any inquiry as to whether there was any such record?

A. I have no reason to, sir.

Q. Because you were aware that none would be made?

A. Well, I just don't do it as a matter of practice or direction in my office, Mr. Brill.

Q. Now—

A. There was an exception to that in January of '71, but pursuant to my own instructions, but not in the period of time you are talking about.

Q. You said on direct examination that you did not recall Mr. Carson coming to your offices prior to November 24, 1970?

A. I don't recall it, but he could have, Mr. Brill. I see so many people that—

Q. And would your answer be the same with respect to telephone conversations requesting to come to your office?

A. You mean Mr. Carson calling me prior to that time to come to my office?

Q. Yes.

A. I don't recall such a conference.

Q. You have no recollection?

A. No, because if he had asked to I would have worked it out so he could have, I would have invited him to be in my office.

Q. You are not saying he didn't call?

A. No, sir.

Q. You just don't recall?

A. No, sir, I get 50 or 60 telephone calls a day, and I just don't recall it, Mr. Brill.

Q. It would be impossible to do it?

A. Yes, sir.

Q. Now, at the time when Mr. Carson did come to your office on November 24, 1970, there was a matter in which the State of Hawaii was interested, wasn't there?

A. There very possibly could have been. There could have been a judicial appointment in which Senator Fong was interested.

Q. Well, are you saying now that you have no recollection of it?

A. Meaning that there was a matter that—

Q. Yes.

A. —that involved the State of Hawaii?

Q. Yes.

A. Well, I am just trying to recollect when a vacancy in the Ninth Circuit had been filed, to recall whether specifically that would have been an item in which Senator Fong would have been interested on that time. I don't. I'd have to have my memory refreshed.

Q. Well, perhaps I can help you.

Does the fact that there were several vacancies for judicial appointments to the Circuit Court for the Ninth Circuit, to the United States Court of Appeals for the Ninth Circuit, created some time prior to November 1, 1970?

A. Yes, there were vacancies on the court.

Q. And isn't it also true that there was a vacancy created by the resignation of Judge Barnes on October 31, 1970?

A. I believe that's correct, but I am not sure of the exact date.

Q. And do you recall that in connection with those vacancies there was recommended to you by Senator Fong or his office the name

of Herbert Y. C. Choy, who had been attorney general of the State of Hawaii, for appointment to that court?

A. He was recommended and he is now a judge on the Ninth Circuit. The date is——

Q. That recommendation was adopted by you, was it not?

A. Yes, it was.

Q. And you in turn recommended it to the President?

A. Yes, I did.

Q. And the President nominated Judge Choy?

A. Yes, he did.

Q. Now, that was the subject of conversation and correspondence between yourself and Mr. Carson and Senator Fong in about this period that we are talking about, wasn't there?

A. It was a subject matter of conversation. I don't recall whether there was correspondence on it, Mr. Brill.

Mr. BRILL. Could we have this marked for identification, please.

(Defendant's Exhibit K marked for identification.)

Q. Are you familiar with the signature of the attorney general?

A. Yes, sir, I am.

Q. Would you say, Mr. Kleindienst, that that is a photostat of a copy signed by the attorney general, that is, the attorney general of the United States?

A. This is a photostat of a document that has the signature of the attorney general.

Q. And you recognize it as the signature of Attorney General Mitchell?

A. Yes, sir, I do.

Q. And it is a document that relates to the appointment or the recommendation of Judge Choy for appointment?

A. Yes, sir.

Mr. BRILL. I offer it in evidence.

Mr. MORVILLO. No objection.

Mr. BRILL. Thank you.

(Defendant's Exhibit K was received in evidence.)

Mr. BRILL. May I read it, your Honor?

The COURT. Yes.

Mr. BRILL. On the stationery of Office of the Attorney General, Washington, D.C., the seal of the attorney general in the upper left-hand corner, dated November 19th, addressed Hon. Hiram L. Fong, United States Senate, Washington, D.C.

(Mr. Brill read from Defendant's Exhibit K in evidence.)

Mr. BRILL. I don't think I need pass this since I read it, do you, your Honor?

The COURT. No, I don't think so.

By Mr. Brill:

Q. Now, then, coming back to the meeting that you had at your office with Mr. Carson on November 24th, would you say that the subject of Mr. Choy's recommendation was discussed between you and Mr. Carson on that date?

A. I don't specifically recollect, Mr. Brill, but it very possibly could have been. It would not have been much of a discussion because—

Q. Pardon?

A. It would not have been much of a discussion because the decision had been made that Hawaii would be allocated that seat on the Ninth Circuit, and the only thing left to be done at that point was the processing of it. But the subject matter could have been raised, Mr. Brill.

Q. Well, how long would you say in point of time was consumed during a conversation between you and Mr. Carson on November 24th?

A. Well, the whole meeting, from the time he walked in my office until the time he left, was just a matter of minutes, several minutes.

Q. How many minutes, would you say?

A. No more than 15 and possibly less.

Q. Well, did you ever say that it was about 15 minutes?

A. I believe I did when I talked to Mr. Peterson the first time.

Q. And did you say to Mr. Peterson that you directed the subject of conversation of a judiciary appointment of mutual interest to Senator Fong and the administration?

Mr. MORVILLO. I will object. What's the relevance of what he said to Mr. Peterson unless it is somehow inconsistent with the testimony here? I think he should be cross examined on what happened on November 24th, not what happened with Mr. Peterson.

The COURT. What about that, Mr. Brill?

Mr. BRILL. I think, your Honor, I have a right to ask about statements he made to others with respect to what happened on November 24th.

The COURT. Only if you find some inconsistency.

Mr. BRILL. Well, I think there is one now.

The COURT. I don't think so.

Objection sustained.

By Mr. Brill:

Q. Well, do you recall whether you specifically talked with Mr. Carson on November 24th with respect to the subject of a judiciary appointment of mutual interest to Senator Fong and the administration?

A. Mr. Brill, today I do not specifically recollect that. I very possibly did and, indeed, very probably did.

Q. Well, perhaps we can help your recollection. I show you Exhibit 3528 for identification. Excuse me.

I show you Exhibit 3529 for identification, page 2, and invite your attention to the first full paragraph and ask you to tell us whether that refreshes your recollection as to whether you talked—

A. It does.

Q. It does?

A. Yes, sir.

Q. And did you talk about a judiciary appointment?

A. I am certain that that's what we were talking about because of what had transpired prior to that time.

Q. And that was the subject of conversation on the 24th of November, isn't that correct?

A. Yes, sir

Q. And that related to the recommendation of Judge Choy, did it not?

A. Yes, sir, it would have involved that subject matter.

Q. Now, how long would you say was consumed with respect to, in point of time—in the conversation with respect to what you testified to on direct examination about Mr. Carson's purported statement about a friend in New York in trouble who had contributed $100,000 to the reelection of President Nixon?

A. A miute, maybe two minutes.

Q. Maximum?

A. Maximum.

Q. Maybe even less?

A. Maybe even less.

Q. Did you make any record of that portion of the conversation?

A. No, sir.

Q. Did you make any memorandum of any kind with respect to it?

A. No, sir.

Q. Did you make any recording of any kind with respect to it?

A. No, sir.

Q. Did you make any report or initiate any investigation with respect to that portion of the conversation?

A. No, sir.

Q. Isn't it true that the first time you ever said or wrote anything about that subject was on December 1, 1970?

A. Yes, sir.

Q. And that's the first date on which you made any memorandum whatsoever?

A. Yes, sir.

Q. And you made it on the basis of what was in your head?

A. You mean the reason why I made the memorandum?

Q. No, no, what you based it on. Was it your recollection?

A. You mean the memorandum that I wrote a week later, was that based upon my recollection?

Q. Yes.

A. Solely upon my recollection.

Q. Solely upon your recollection.

And it was made, was it not, after you were informed that on that very day there was going to be an electronic surveillance in the new Senate Office Building?

A. No. It was after I had been shown a memorandum dated November 30th addressed to the attorney general from the director of the FBI which had reference to Mr. Carson.

Q. Did it say that there would be an electronic surveillance scheduled for that very morning, December 1, 1970?

A. I don't recollect, Mr. Brill. I'd have to see the memorandum.

Q. Well, perhaps I can help you.

A. All right.

Q. Will you look at Exhibit 3529, please, sir, and specifically the second paragraph which I have just underscored in pencil and tell us whether it refreshes your recollection that you wrote the memorandum after you were informed that there was to be an electronic surveillance scheduled for that morning?

A. Yes, it does.

Q. And is that the fact that you write it after you were so advised?

A. I wrote——

Q. Would you answer my question, please, sir?

A. I don't understand your question then, sir. Would you restate it?

Q. Did you write that memorandum after you had been advised that there was scheduled to be conducted that morning an electronic surveillance?

A. Well, the information I got I got at 9 o'clock on this day. I wrote this at 10. So I got this information between 9 and 10 in the office of the attorney general.

Q. Well, didn't you say that you had been informed or advised that there were scheduled to occur that morning an electronic surveillance?

A. I received that information.

Q. Yes.

A. That's what it was about.

Q. And it was after you received it that you wrote this memorandum?

A. Yes, sir.

Q. Now, you knew when you received it that that electronic surveillance would be conducted in the new Senate Office Building, did you not?

A. I don't know whether I knew that specifically, whether it made any difference to me to know that specifically, Mr. Brill.

Q. Are you saying now you just don't recall?

A. Yes.

Q. Okay.

A. Whether that was a significant—I don't recall it now.

Q. All right.

So that between November 24th and December 1st, you gave no further thought to that portion of the conversation which lasted a minute or two, if that much, in which you said Mr. Carson told you that he had a friend who would contribute $100,000 to the Nixon campaign?

A. That's correct.

Q. Now, since December 1, 1970, have you had any further telephonic conversation with Mr. Carson?

A. No, sir.

Q. Do you remember that there came a time, specifically on December 12, 1970, when you were placed under oath by a special agent of the FBI and you made a statement under oath?

A. Yes, sir.

Q. That was rather an unusual procedure, wasn't it?

A. No, I don't think so, sir.
Q. Had it ever happened to you before?
A. No, sir.
Q. With respect to you it was unusual, wasn't it?
A. This was the first time anything like this had ever happened to me.
Q. Do you remember that among other things in connection with that statement under oath you said that since December 1, 1970, you had had one telephonic contact with Mr. Carson in connection with a judiciary appointment?
A. I remember that. I talked to Mr. Carson once and the sole subject matter of that was with respect to this judicial appointment and no other subject matter was mentioned. I do now recall that.
Mr. BRILL. Thank you. Excuse me. I had a signal from my learned friend here.
(Discussion off the record at counsel table.)
Mr. BRILL. Mr. Morvillo points out that my reference to that episode of his being examined under oath was on December 16th rather than December 12th, which inadvertently or apparently I had said as the date. I am sorry.
To that extent may the record be corrected, your honor?
The COURT. Yes.
Mr. BRILL. Thank you.
By Mr Brill:
Q. Actually, other than November 24th and December 1, then, there was no communication between Mr. Carson and yourself by telephone or in person with respect to anything?
A. That is correct.
Q. After December 1, 1970, the only communication that you had by telephone related to the appointment of Judge Choy?
A. Yes, sir, he called my office after that, but the only time I talked to him was once and it was that event.
Q. Did you see him again after that?
A. I don't recollect that I did.
Q. You are not saying that you did not?
A. No, I am not.
Q. To your knowledge, Mr. Kleindienst, did Mr. Carson talk with anyone else in the Department of Justice with respect to the subject matter that you testified to here on direct examination?
A. Not to my knowledge. As a matter of fact, didn't you so swear and state under oath?
Q. Well, will you look—do you recall now whether you said it under oath?
A. No.
Mr. MORVILLO. He just said to his knowledge he didn't.
The COURT. Sustained.
Q. Is it true, then, is it not, that on November 24, 1970, you did not regard that in the conversation you had with Mr. Carson that he offered you a bribe?
A. No, I did not.
Q. If you had regarded that conversation as containing a bribe offer, you would have immediately reported it, would you not?
A. Yes, sir, I would have.
Q. And you would have initiated the appropriate action to deal with it, isn't that true?
A. Well, I would have reported it and taken that action that the circumstances warranted.
Q. And the fact of the matter is that you did absolutely nothing about it until you were informed on December 1 that there was scheduled to take place an electronic surveillance some time that day?
A. Well, that is not quite accurate, Mr. Brill.
Q. Isn't it?
A. Until I saw the memorandum dated November 30th, which the attorney general handed to me, which was directed to him from the director of the Federal Bureau of Investigation.
Q. When did you see that?
A. I saw it at approximately 9 o'clock in the morning on Tuesday, December 1, in the office of the attorney general.
Q. And it was not until after that that you did or said or wrote anything with respect to the conversation of November 24th?
A. Within minutes after I saw that, and at 10 o'clock I prepared the memorandum with Mr. Peters on that day, that is correct.
Q. It was with respect to a matter which on November 24th you did not regard as a bribe, isn't that true?
A. That is correct.
Mr. BRILL. Thank you, sir, I have no further questions.

REDIRECT EXAMINATION

By Mr. Morvillo:
Q. Mr. Kleindienst, prior to November 24, 1970, had you received any communications from anybody, either within or without the Department of Justice, about the fact that there was an investigation going on with regard to Robert Carson?
A. I have no recollection of it. I get many, many documents from the FBI, some of which I see and some of which I do not. It was not until the morning of December 1, at 9 o'clock, in the office of the attorney general, that I became aware that there was any kind of an investigation concerning Mr. Carson.
Q. Prior to November 24th you did not know specifically whether or not Mr. Carson had met with any other individuals in conjunction with the subject matter of your conversation with him on November 24th, did you?
A. No, sir.
Mr. BRILL. That is objected to, if your Honor please, improper redirect.
The COURT. Sustained.
Q. Now, on December 1st, you told Mr. Brill that for the first time you really learned something about the facts of the investigation which was going on involving Mr. Carson, is that correct?
Mr. BRILL. I object to that, if your Honor please, as an improper statement of what was said.
The COURT. Let's not summarize what he said on cross; let's ask some other questions.
Q. Specificially, what did you learn on December 1, 1970 with regard to an investigation involving Mr. Carson?
Mr. BRILL. I am going to object to that, if your Honor please. He would not be competent to testify to it.
The COURT. He would be competent to testify to what he learned.
Mr. BRILL. To what he did.
The COURT. He was asked what he heard.
Mr. MORVILLO. What he learned.
Mr. BRILL. That is what I am objecting to.
The COURT. I will sustain that.
Mr. MORVILLO. Your Honor, Mr. Brill has explored this in some detail on cross examination, and I think the government should be entitled to find out specifically what motivated Mr. Kleindienst to do what he did on December 1st.
The COURT. Well, I think there is enough of that, but I think that the possibility of getting in hearsay that goes to the merits of the case outweighs the need to express that and I sustain the objection.
By Mr. Morvillo:
Q. After learning what you learned on December 1, 1970 with regard to the fact that there was an investigation involving Mr. Carson, did you then consider what had happened on November 24th to have been a bribe offer?
A. Yes.
Mr. MORVILLO. No further questions.

RECROSS EXAMINATION

By Mr. Brill:
Q. Mr. Kleindienst, are you really serious about that last answer?
A. Well, I am serious about it, but I have to explain that, Mr. Brill.
Q. No, no, just answer my question first, please.
A. Yes, I am, but I would like to explain that answer, if I may.
Q. Let me ask you this—you will get a chance to explain, don't worry—on November 24th, in the minute or less than two minutes in which the statement was made, you have already told us you did not regard that you were being offered a bribe or that the conversation consisted of the making of an offer of a bribe, isn't that right?
A. Right.
Q. Isn't that true?
A. Yes, sir.
Q. Now, that is the only conversation that you had with Mr. Carson with respect to that subject matter, isn't it?
A. Yes, sir.
Q. And it is the only conversation in which there was any statement made to you by Mr. Carson?
A. That is correct.
Q. And at no time after that date did he ever again speak to you with respect to the subject matter?
A. That is correct.
Q. And at no time between the date that he first spoke to you and subsequently did you ever regard from him that he was offering you a bribe, isn't that so?
A. That is correct.
Mr. BRILL. Thank you. I have no further questions.
Mr. MORVILLO. I have no further questions.
The COURT. All right, Mr. Kleindienst, thank you.
The WITNESS. Thank you, Judge.
May I be excused, Judge?
The COURT. Yes.
(Witness excused.)

Mr. HRUSKA. Here is what Mr. Kleindienst was worried about. He said:

I was a witness in that case. I testified in open court in the Federal District Court for the Southern District of New York. My testimony in that matter is a matter of open record. That case is on appeal and I believe that either as a lawyer or as an officer of the Department of Justice that it would be improper for me to comment in any way upon any aspect of that case because by doing so I might risk prejudicing the rights of the defendant in that case, either on appeal or in a retrial of the matter, if one comes about, or to prejudice the rights of the U.S. Government which was the plaintiff in that case.

Mr. President, I suggest there was a full disclosure with all the information that could be explored in that situation. But for some reason a pound of flesh, no less, no more, is trying to be exacted.

"Why didn't you tell it to me in this fishing expedition, regardless of what would happen to the rights of the Government or the rights of the defendant, regardless of what would happen by way of regulations of the Department and all these other canon provisions and disciplinary rules?"

Besides that, the testimony was in a case in court. a criminal proceeding, which was governed by strict rules of evidence, not by fishing rules, not by hearsay, not by any of the other nonrules by which the committee governed the admission of evidence.

It seems to me, considering all those questions, it is a matter of form that is being insisted upon. There is no disposition not to disclose. That disclosure has been made. Everything has been laid out for the public to see, including the Members of the Senate and including both Members of the Senate who are engaging in this colloquy.

Mr. BAYH. Let me suggest that, to the contrary, this has not been laid out. There are two times in the transcript that prove that. If the Senator wants us

to embellish the record by putting the whole transcript in, we have done that. We put it all in. My staff has read it all. There is no answer to this last question.

On two occasions in the transcript, when the Attorney General-designate was being examined, he was asked to explain. The attorney said, "You will be given a chance to explain," but he never came back to that again and never has the question been asked and answered: how it is possible for a man to see an obvious bribe attempt and not recognize it as a bribe? Second, why, suddenly, a week later, upon learning that the FBI was going to conduct surveillance, did it become obvious that it was a bribe attempt?

The Senator from Nebraska and I have worked together and have been friendly combatants on other issues. He is talking about a fishing expedition. I listened to his statement the other day with great interest. I have heard this statement referred to by others. I am not sure who is the original author, and I do not want to suggest the Senator from Nebraska is, unless he cares to assume credit for it, but does my friend from Nebraska really believe that it is not a relevant question to ask an Acting Attorney General why, when someone comes into an office and says he is in trouble and if he will take care of that trouble he will make a $50,000 or $100,000 contribution to the presidential campaign why he didn't think that was a bribe? Is it a pertinent question to ask, "Mr. Attorney General designate, why didn't you recognize that as a bribe?"

Mr. HRUSKA. Mr. President, against my better judgment, I rise to my feet once more. Were I on the witness stand and that question were propounded to me, I would take refuge in the proposition that that question has already been asked and has already been answered.

Mr. BAYH. Can the Senator refer to one place where it has been answered?

Mr. HRUSKA. Mr. President, that question has already been asked and answered, and it is in the colloquy that occurred between the Senator from Indiana and myself. To be subjected to the same type of repetitious questions in areas that have been asked and answered, that we suffered through 2 months in the Judiciary Committee, it seems to me, is straining one's patience a little too much.

I suggest that the Senator from Indiana review the transcript and he will find the question has been asked and answered at least three times. I do not think it serves any purpose to answer a fourth or fifth or sixth or seventh time.

Mr. BAYH. I will not ask it another time if the Senator from Nebraska will answer it once. Perhaps I am not asking the question accurately. Am I referring to the proper record? I am sure the Senator from Nebraska does not feel compelled to avoid answering it. The question I propounded, in answer to this fishing expedition charge that keeps coming back, is: Is it unreasonable to ask a man who may one day be Attorney General of the United States why, when he was asked to fix a case in exchange for a $50,000 to $100,000 campaign contribution, it was not immediately recognized as a bribe? Is that an unfair question to ask a man who is going to be Attorney General of the United States?

Mr. HRUSKA. Mr. President, same answer.

Mr. BAYH. Is the Senator suggesting he has already answered that particular question whatever? I do not want to force the Senator to answer the question if he has answered it before. I will just stop.

Mr. HRUSKA. Same answer. The answer is there and it has been given several times.

Mr. BAYH. If the Senator does not want me to repeat the question, could he just give me the page? He says it has been answered three or four times. If he could give me one page or one sentence or one paragraph in any record, anywhere, then I will agree with him. The record will show—and I have read the record and transcript, and I was there at least as often as any member of the committee—that that question was never asked, and was never answered. I wanted to ask it, but Mr. Kleindienst refused to answer.

Mr. HRUSKA. Just to clear up an apparent misunderstanding of the Senator from Indiana, it was not to the record of the hearings I was referring; it was to the colloquy occurring on the floor of the Senate that the recent questions, several in number, all of them similar, were propounded, and they were answered. It is in the colloquy between the two Senators.

Mr. BAYH. I respectfully submit I have never asked that question before just now. That is why I was suggesting the Senator was answering a question that was not asked. I do not see too much to be gained by this, but the fact is that if anybody reads the record of what we said, or what was testified at the hearings, or read the transcript of the case in New York, he is never going to find an answer to the question I wanted to put to Mr. Kleindienst: did he recognize the $50,000 or $100,000 contribution in exchange for fixing the case as a bribe?

That is a reasonable question to ask.

The Senator from Nebraska is a very good lawyer and makes the best possible case out of the facts involved. That even he cannot answer this question does not go to his credibility or his expertise, but it goes to the fact that the case does not have any legs to stand on. We cannot take Justice Department doctrine or ABA canons to substantiate a future Attorney General's refusal to answer a question that is a pretty important question.

Mr. HRUSKA. Mr. President, again I rise against my better judgment. The Senator from Nebraska answered that question several times, but the best answer is to be found in Mr. Kleindienst's own language. This area was explored to the extent permitted by the court by Mr. Carson's defense counsel. He answered under oath, in open court. That transcript is in printed form, and I see no reasonable necessity for requiring him to go into the matter again before the committee when his solid judgment was that it would have constituted a violation of the rules of Department of Justice and probably be a basis for prejudicing either the defendant's or Government's case or both.

Mr. BAYH. Mr. President, so that this can be in continuity here, let me take the excerpts from the transcript. Anybody who wants to read the entire court transcript can do so, but the pertinent excerpts are as follows:

Question. After learning what you learned on December 1, 1970, with regard to the fact that there was an investigation involving Mr. Carson, did you then consider what had happened on November 24 to have been a bribe?

Answer. Yes.

Question. Mr. Kleindienst, are you really serious about that last answer?

Answer. Well, I am serious about it, but I have to explain it, Mr. Brill.

Question. No, no. Just answer the question, please.

Answer. Yes, I am, but I would like to explain that answer if I may.

Question. Let me ask you. You will have a chance to explain.

He never got a chance to explain. That is as close as he got. At that particular time, for some reason, he wanted to say why it was possible to go for a week and not recognize it as a bribe, and why it was only after he had learned that the FBI was putting a bug on Carson that he thought it was a bribe. Yet he was denied the opportunity by defense counsel. However, he was not denied by defense counsel before the Senate Judiciary Committee; he just plain refused to answer himself.

Mr. President, I yield the floor.

The PRESIDING OFFICER. What is the will of the Senate?

MINING AND MINERALS RESOURCES RESEARCH ACT OF 1972

Mr. ROBERT C. BYRD. Mr. President, as in legislative session, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 635.

The PRESIDING OFFICER (Mr. BEALL) laid before the Senate the amendments of the House of Representatives to the bill (S. 635) to amend the Mining and Minerals Policy Act of 1970 which were to strike out all after the enacting clause, and insert:

That (a) this Act may be cited as the "Mining and Minerals Resources Research Act of 1972".

(b) In recognition of the fact that the prosperity and future welfare of the Nation is dependent in a large measure on the sound exploration, extraction, processing, and development of its unrenewable mineral resources, and in order to supplement the Act of December 31, 1970, Public Law 91-631, commonly referred to as the Mining and Minerals Policy Act of 1970, the Congress declares that it is the purpose of this Act to stimulate, sponsor, provide for and/or supplement present programs for the conduct of research, investigations, experiments, demonstrations, exploration, extraction, processing, development, production, and the training of mineral engineers and scientists in the fields of mining, mineral resources, and technology.

TITLE I—STATE MINING AND MINERAL RESOURCES RESEARCH INSTITUTES

SEC. 100. (a) There are authorized to be appropriated to the Secretary of the Interior

for the fiscal year 1973, and for each succeeding fiscal year thereafter the sum of $500,000, for each participating State, to assist it in establishing and carrying on the work of a competent and qualified mining and mineral resources research institute, center, or equivalent agency (hereinafter referred to as "institute") at one college or university in that State, which college or university shall be the tax-supported school of mines or a tax-supported college or university having an administrative unit such as a school or department wherein education and research are being carried out in the minerals engineering fields: *Provided*, That (1) such moneys when appropriated shall be made available to match, on a dollar for dollar basis, non-Federal funds which shall be at least equal to the Federal share to support the institute; (2) if there is more than one such college or university in a State, funds under this Act shall, in the absence of a designation to the contrary by act of the legislature of the State, be paid to the one such college or university designated by the Governor of the State to receive the same subject to the Secretary's determination that such college or university has, or may reasonably be expected to have, the capability of doing effective work under this Act; (3) two or more States may cooperate in the designation of a single interstate or regional institute, in which event the sums assignable to all of the cooperating States shall be paid to such institute; and (4) a designated college or university may, as authorized by appropriate State authority, arrange with other colleges and universities within the State to participate in the work of the institute.

(b) It shall be the duty of each such institute to plan and conduct and/or arrange for a component or components of the college or university with which it is affiliated to conduct competent research, investigations, demonstrations, and experiments on mineral resource problems having industrywide application, of either a basic or practical nature, or both, in relation to mining and mineral resources and to provide for the training of mineral engineers and scientists through such research, investigations, demonstrations, and experiments. Such research, investigations, demonstrations, experiments, and training may include, without being limited to, exploration; extraction; processing; development; production of mineral resources; mining and mineral technology; supply and demand for minerals; conservation and best use of available supplies of minerals; the economic, legal, social engineering, recreational, biological, geographic, ecological, and other aspects of mining, mineral resources, and mineral reclamation, having due regard to the interrelation on the natural environment, the varying conditions and needs of the respective States, to mining and mineral resource research projects being conducted by agencies of the Federal and State governments, and others, and to avoid any undue displacement of mineral engineers and scientists elsewhere engaged in mining and mineral resources research.

SEC. 101. (a) There is further authorized to be appropriated to the Secretary of the Interior for fiscal year 1973, and the four succeeding fiscal years thereafter the sum of $5,000,000 annually, which shall remain available until expended. Such moneys when appropriated shall be made available to institutes to meet the necessary expenses of specific mineral research and demonstration projects of industrywide application, which could not otherwise be undertaken, including the expenses of planning and coordinating regional mining and mineral resources research projects by two or more institutes.

(b) Each application for a grant pursuant to subsection (a) of this section shall, among other things, state the nature of the project to be undertaken, the period during which it will be pursued, the qualifications of the personnel who will direct and conduct it, the estimated cost, the importance of the project to the Nation, region, or State concerned, and its relation to other known research projects theretofore pursued or being pursued, and the extent to which it will provide opportunity for the training of mining and mineral engineers and scientists, and the extent of participation by nongovernmental sources in the project. No grant shall be made under said subsection (a) except for a project approved by the Secretary of the Interior, and all grants shall be made upon the basis of merit of the project, the need for the knowledge which it is expected to produce when completed, and the opportunity it provides for the training of individuals as mineral engineers and scientists.

SEC. 102. Sums available to institutes under the terms of sections 100 and 101 of this Act shall be paid at such times and in such amounts during each fiscal year as determined by the Secretary, and upon vouchers approved by him. The Secretary may designate a certain proportion of the funds authorized by section 100 of this Act for scholarships, graduate fellowships, and postdoctoral fellowships. Each institute shall set forth its plan to provide for the training of individuals as mineral engineers and scientists under a curriculum appropriate to the field of mineral resources and mineral engineering and related fields; set forth policies and procedures which assure that Federal funds made available under this title for any fiscal year will supplement and, to the extent practicable, increase the level of funds that would, in the absence of such Federal funds, be made available for purposes of this title, and in no case supplant such funds; have an officer appointed by its governing authority who shall receive and account for all funds paid under the provisions of this Act and shall make an annual report to the Secretary on or before the 1st day of September of each year, on work accomplished and the status of projects underway, together with a detailed statement of the amounts received under any provisions of this Act during the preceding fiscal year, and of its disbursements on schedules prescribed by the Secretary. If any of the moneys received by the authorized receiving officer of any institute under the provisions of this Act shall by any action or contingency be found by the Secretary to have been improperly diminished, lost, or misapplied, it shall be replaced by the State concerned and until so replaced no subsequent appropriation shall be allotted or paid to any institute of such State.

SEC. 103. Moneys appropriated pursuant to this Act, in addition to being available for expenses for research, investigations, experiments, and training conducted under authority of this Act, shall also be available for printing and publishing the results thereof and for administrative planning and direction. The institutes are hereby authorized and encouraged to plan and conduct programs under this Act in cooperation with each other and with such other agencies and individuals as may contribute to the solution of the mining and mineral resources problems involved, and moneys appropriated pursuant to this Act shall be available for paying the necessary expenses of planning, coordinating, and conducting such cooperative research.

SEC. 104. The Secretary of the Interior is hereby charged with the responsibility for the proper administration of this Act and, after full consultation with other interested Federal agencies, shall prescribe such rules and regulations as may be necessary to carry out its provisions. The Secretary shall require a showing that institutes designated to receive funds have, or may reasonably be expected to have, the capability of doing effective work. The Secretary shall furnish such advice and assistance as will best promote the purposes of this Act, participate in coordinating research initiated under this Act by the institutes, indicate to them such lines of inquiry as to him seem most important, and encourage and assist in the establishment and maintenance of cooperation, by and between the institutes and between them and other research organizations, the United States Department of the Interior, and other Federal establishments.

On or before the 1st day of July in each year after the passage of this Act, the Secretary shall ascertain whether the requirements of section 102 have been met as to each State.

The Secretary shall make an annual report to the Congress of the receipts, expenditures, and work of the institutes in all States under the provisions of this Act. The Secretary's report shall indicate whether any portion of an appropriation available for allotment to any State has been withheld and, if so, the reasons therefor.

SEC. 105. Nothing in this Act shall be construed to impair or modify the legal relationship existing between any of the colleges or universities under whose direction an institute is established and the government of the State in which it is located, and nothing in this Act shall in any way be construed to authorize Federal control or direction of education at any college or university.

TITLE II—ADDITIONAL MINING AND MINERAL RESOURCES RESEARCH PROGRAMS

SEC. 200. There is authorized to be appropriated to the Secretary of the Interior $10,000,000 in fiscal year 1973, increasing $2,000,000 annually for five years, and continuing at $20,000,000 annually thereafter from which the Secretary may make grants, contracts, matching, or other arrangements with educational institutions; private foundations or other institutions; with private firms and individuals; and with local, State, and Federal Government agencies, to undertake research into any aspects of mining and mineral resources problems related to the mission of the Department of the Interior, which may be deemed desirable and are not otherwise being studied. The Secretary shall, insofar as it is practicable, utilize the facilities of institutes designated in section 100 of this Act to perform such special research, authorized by this section, and shall select the institutes for the performance of such special research on the basis of the qualifications of the personnel who will conduct and direct it, the nature of the facilities available in relation to the particular needs of the research project, special geographic, geologic, or climatic conditions within the immediate vicinity of the institute in relation to any special requirements of the research project, and the extent to which it will provide opportunity for training individuals as mineral engineers and scientists.

TITLE III—MISCELLANEOUS PROVISIONS

SEC. 300. The Secretary of the Interior shall obtain the continuing advice and cooperation of all agencies of the Federal Government concerned with mining and mineral resources of State and local governments, and of private institutions and individuals, to assure that the programs authorized in this Act will supplement and not duplicate established mining and minerals research programs, to stimulate research in otherwise neglected areas, and to contribute to a comprehensive, nationwide program of mining and minerals research. The Secretary shall make generally available information and reports on projects completed, in progress, or planned under the provisions of this Act, in addition to any direct publication of information by the institutes themselves.

SEC. 301. Nothing in this Act is intended to give or shall be construed as giving the Secretary of the Interior any authority or surveillance over mining and mineral resources research conducted by any other agency of

the Federal Government or as repealing, superseding, or diminishing existing authorities, or responsibilities of any agency of the Federal Government to plan and conduct, contract for, or assist in research in its area of responsibility and concern with mining and mineral resources.

SEC. 302. Contracts or other arrangements for mining and mineral resources research work authorized under this Act with an institute, educational institution, or nonprofit organization may be undertaken without regard to the provisions of section 3684 of the Revised Statutes (31 U.S.C. 529) when, in the judgment of the Secretary of the Interior advance payments of initial expense are necessary to facilitate such work.

SEC. 303. No part of any appropriated funds may be expended pursuant to authorization given by this Act for any scientific or technological research or development activity unless such expenditure is conditioned upon provisions determined by the Secretary of the Interior, with the approval of the Attorney General, to be effective to insure that all information, uses, products, processes, patents, and other developments resulting from that activity will (with such exception and limitation as the Secretary may determine, after consultation with the Secretary of Defense, to be necessary in the interest of the national defense) be made freely and fully available to the general public. Nothing contained in this section shall deprive the owner of any background patent relating to any such activity of any rights which that owner may have under that patent.

SEC. 304. There shall be established, in such agency and location as the President determines to be desirable, a center for cataloging current and projected scientific research in all fields of mining and mineral resources. Each Federal agency doing mining and mineral resources research shall cooperate by providing the cataloging center with information on work underway or scheduled by it. The cataloging center shall classify and maintain for general use a catalog of mining and mineral resources research and investigation projects in progress or scheduled by all Federal agencies and by such non-Federal agencies of government, colleges, universities, private institutions, firms, and individuals as voluntarily may make such information available.

SEC. 305. The President shall, by such means as he deems appropriate, clarify agency responsibility for Federal mining and mineral resources research and provide for interagency coordination of such research, including the research authorized by this Act. Such coordination shall include (a) continuing review of the adequacy of the Government-wide program in mining and mineral resources research, (b) identification and elimination of duplication and overlap between two or more agency programs, (c) identification of technical needs in various mining and mineral resources research categories, (d) recommendations with respect to allocation of technical effort among the Federal agencies, (e) review of technical manpower needs and findings concerning management policies to improve the quality of the Government-wide research effort, and (f) actions to facilitate interagency communications at management levels.

SEC. 306. (a) The Secretary of the Interior shall appoint an Advisory Committee on Mining and Minerals Resources Research composed of—

(1) the Director, Bureau of Mines, or his delegate, with his consent;

(2) the Administrator of the National Oceanic and Atmospheric Administration, or his delegate, with his consent;

(3) the Director of the National Science Foundation, or his delegate, with his consent;

(4) the President, National Academy of Sciences, or his delegate, with his consent;

(5) the President, National Academy of Engineering, or his delegate, with his consent; and

(6) such other persons as the Secretary may appoint who are knowledgeable in the field of mining and mineral resources research.

(b) The Secretary shall designate the Chairman of the Advisory Committee. The Advisory Committee shall consult with, and make recommendations to, the Secretary of the Interior on all matters involving or relating to mining and mineral resources research. The Secretary of the Interior shall consult with, and consider recommendations of, such Committee in the conduct of mining and mineral resources research and the making of any grant under this Act.

(c) Advisory Committee members, other than officers or employees of Federal, State, or local governments, shall be, for each day (including traveltime) during which they are performin gCommittee business, entitled to receive compensation at a rate fixed by the appropriate Secretary but not in excess of the maximum rate of pay for grade GS–18 as provided in the General Schedule under section 5332 of title 5 of the United States Code, and shall, notwithstanding the limitations of sections 5703 and 5704 of title 5 of the United States Code, be fully reimbursed for travel, subsistence, and related expenses.

SEC. 307. As used in this Act, the term "State" includes the Commonwealth of Puerto Rico.

And amend the title so as to read: "An act to establish mining and mineral research centers, to promote a more adequate national program of mining and minerals research, to supplement the act of December 31, 1970, and for other purposes."

Mr. ROBERT C. BYRD. Mr. President, at the request of the Senator from Washington (Mr. JACKSON), I move that the Senate disagree to the amendment of the House of Representatives and request a conference with the House on the disagreeing votes of the two Houses thereon, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. JACKSON, Mr. BIBLE, Mr. MOSS, Mr. ALLOTT, and Mr. JORDAN of Idaho conferees on the part of the Senate.

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the program for Monday next is as follows:

The Senate will convene at 12 o'clock noon. After the two leaders have been recognized under the standing order, the junior Senator from West Virginia (Mr. ROBERT C. BYRD), now speaking, will be recognized for not to exceed 15 minutes, after which there will be a period for the transaction of routine morning business, for not to exceed 30 minutes, with statements therein limited to 3 minutes—all of which will be as in legislative session.

At the conclusion of routine morning business, the Senate in executive session will resume its consideration of the nomination of Mr. Richard G. Kleindienst for the Office of Attorney General of the United States.

No rollcall votes are anticipated for Monday. This is not to say, however, that unforeseen developments could not arise which would necessitate rollcall votes; but the leadership does not expect any at this time.

ADJOURNMENT UNTIL MONDAY

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in adjournment until 12 o'clock noon on Monday next.

The motion was agreed to; and (at 3:40 p.m.) the Senate adjourned in executive session until Monday, June 5, 1972, at 12 noon.

EXTENSIONS OF REMARKS

MAN'S INHUMANITY TO MAN—HOW LONG?

HON. WILLIAM J. SCHERLE

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 1, 1972

Mr. SCHERLE. Mr. Speaker, a child asks: "Where is daddy?" A mother asks: "How is my son?" A wife asks: "Is my husband alive or dead?"

Communist North Vietnam is sadistically practicing spiritual and mental genocide on over 1,600 American prisoners of war and their families.

How long?

DEDICATION CEREMONIES—THE GEORGE W. ANDREWS LOCK AND DAM

HON. GEORGE H. MAHON

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 1, 1972

Mr. MAHON. Mr. Speaker, the Congress, in Public Law 92–229, approved by the President February 15 of this year, designated an important waterway project in Alabama as the "George W. Andrews Lock and Dam" in honor of our late distinguished and beloved colleague, George Andrews, of Union Springs, Ala. The dedication ceremonies took place on Friday, May 26.

George's wonderful and gracious wife, ELIZABETH—now also honored as our colleague here in the House—spoke at the ceremonies. Her words were moving and eloquent, coming as they did from a grateful heart.

Another distinguished Alabamian, Adm. Tom Moorer, Chairman of the Joint Chiefs of Staff, delivered the principal remarks at the memorial luncheon in Dothan, Ala. He and George were very special friends.

Mr. Speaker, I am certain that George's countless friends here in the legislative branch—including members of the Com-

mittee on Appropriations which I head and upon which George served with such distinction for so many years—will want the opportunity to share in these thoughts and sentiments, and under leave granted I am including them at this point:

REMARKS OF HON. ELIZABETH (MRS. GEORGE) ANDREWS

My gratitude is as deep and wide as the Chattahoochee today, because I know how much this project meant to George. It meant so much that, in order to obtain the initial funds, he bucked his committee chairman and became a crusader among the committee members and only managed to get the project approved by one vote!

He came home that night chuckling as he announced, "We got our nose under the tent!"

He preached the benefits up and down the banks of the Chattahoochee because he realized the future of the economy of our section must have a drastic boost.

I know how thrilled and pleased George was when it was first proposed that the lock and dam be named for him. However, he understood why it could not be done at that time. I know he hoped it would be done some day.

The only regret I think he ever had over his years in Congress was that he realized he had missed a lot of the "growing up" time with his children. I believe he thought the George W. Andrews Lock and Dam would be a legacy that would be meaningful to his children and prove that his many absences were worthwhile.

But what he wanted most of all was to see his dream for the great Chattahoochee come true. This dream has come a long way toward realization, but we must not falter until it is completely realized, with all the economic growth and recreational benefits that it will bring to the section that George loved so much.

And so my heart is filled with appreciation today. I am grateful to the people of the district because without their love and support this ceremony could not have occurred. I am grateful to Congress for passing the resolution that the lock and dam be named for George Andrews.

The Corps of Engineers and the Tri-Rivers Waterway Development Authority have worked untiringly with the details for this day. To them, I say, "Thank you."

Recently I attended a special briefing for Members of Congress on the War in Vietnam. I did not know until I arrived at the briefing that my own very distinguished constituent would be in charge.

I knew what a great man he was; I knew how capable he was; but my heart thrilled at the wonderful remarks made to me afterward about our great Chairman of the Joint Chiefs of Staff by Members of the House.

He instilled confidence because it was evident that he was completely informed of the situation and more than equal to the tasks ahead.

I am deeply touched that, as busy as he is, and as burdened with the defense of our nation as he is, Tom Moorer came here today to honor George.

I am grateful to the Members of Congress, to Dr. Staples, and all my friends from home up and down the Chattahoochee Valley and our neighboring States for their presence here today.

But most of all, I am grateful to George for the mantle of respect and honor that he has thrown to me and our children.

As I sat in the House Chamber Monday of this week, listening to the debate with one ear and trying to think what I would say today, I looked toward the ceiling of that awesome and historical room. My eyes fell on a plaque over the gallery door in back of the Speaker's rostrum, and there, carved in marble, were the words of Daniel Webster:

"Let us develop the resources of our land, call forth its power, build its institutions, promote all its great interests and see whether we also in our day and generation may not perform something worthy to be remembered."

By your action today, you have judged George worthy to be remembered. For our children, and for George and me, "Thank you.

ADDRESS BY ADM. T. H. MOORER

I have a very special reason for wanting to make this speech today. George Andrews was a very special friend.

We gather at this memorial luncheon in Dothan to honor this distinguished gentleman who for twenty-eight years served with endless devotion the people of his district, his State, and his country as a United States Congressman. Later today we will gather for special ceremonies at the lock and dam at Columbia which now bear the name George W. Andrews Lock and Dam. In a House resolution sponsored by Bill Dickinson and his colleagues, and signed into law by President Nixon on February 15th of this year, this public recognition of and tribute to this outstanding Alabamian became official. It is a just and fitting tribute. His honorable name is now permanently united with this Public Works project to which he so greatly contributed. Certainly, he more than any other made possible the dam at Columbia, Alabama.

As we look forward to today's special ceremonies for the George W. Andrews Lock and Dam, I think it proper that we reflect for a few moments on the parallelism between George Andrews' career in the House of Representatives and the development of the Chattahoochee-Flint-Apalachicola Waterways System.

Soon after George was elected to the House in 1944, the River and Harbor Act of 1945 and 1946 was approved, a comprehensive plan for development of the entire Tri-River Basin, and authorized an initial development to provide, among other things, a barge channel from the Gulf Intercoastal Waterway at Apalachicola, Florida to Phenix City and Columbus on the Chattahoochee. With Alabama's Third District bordering the west bank of the Chattahoochee, it was instinctive that George's interest in this project was to be a lasting and energetic one. Even before the basin development was intiated in 1947 he could foresee the future benefits to the people of Alabama—the potential for industrial development, regulated water supply, flood control, hydroelectric power, and recreational development. George Andrews was determined to use his influence as a member of the House Appropriations Committee to nourish and support this basin development for the benefit of the people of Alabama and he did just that. Over the years, the project was not without its problems—problems of great moment and problems tinged with some levity. In these problems George Andrews was, by choice, fully involved.

The initial development plan included the construction of four dams; the Jim Woodruff Dam and Lock on the Apalachicola River near Chattahoochee; the dam and lock at Columbia which originally bore the name of that city; the Walter F. George Dam and Lock near Fort Gaines, and the Buford Dam on the Upper Chattahoochee. The four dams and the necessary locks formed a complete navigation and waterway system, with operation of the complete system dependent upon the development of each link in the chain. By 1958, the Jim Woodruff Lock and Dam and the Buford Dam had been completed, work at the Fort Gaines Lock and Dam was underway, but construction of the lock and dam at Columbia had not been initiated. Furthermore, there were no funds in the President's FY 1959 budget request to commence the project. During the FY 1959 budget hearings George appeared before the Public Works Appropriations Subcommittee to explain the necessity for commencing the project. He pointed out the need to begin work in 1959 in order that construction of the Columbia Dam and Lock be completed concurrently with the Fort Gaines Dam and Lock and thus make the full system operable. He pointed out that the omission of the Columbia Lock and Dam from the system would so reduce the navigation benefits as to make the waterway lack economic justification. And he pointed out in his inimitable fashion that "it had been said that without the dam at Columbia the whole project was not worth a damn." Accordingly construction of the project was begun in 1959 and substantially completed in 1963 concurrently with completion of the Walter F. George project. The hand of George W. Andrews had made its indelible impression.

So the record speaks for itself. With increasing success George Andrews worked hard and long in support of this great tri-State river system. His vision of tremendous economic growth for the area served by this system is becoming a reality. We can all be thankful for his efforts. And we can all be thankful that his gracious and lovely wife, Elizabeth, whom Mrs. Moorer and I count among our dearest friends, is carrying on George's work in the true Andrews' spirit. As recently as the 17th of this month Mrs. Andrews appeared before the Public Works Appropriations Subcommittee to urge continued support for this vital project.

Let me not for one minute imply that George Andrews' interest in this great basin development overshadowed his interest in other river programs. His distinguished colleagues and friends most appropriately gave George the title "Mr. River Development," noting that he worked in behalf of the other river development and flood control programs in this State with the same devotion and effectiveness as for the Chattahoochee. Every area of the State benefited from his service. And as reported by the Dothan Eagle in 1962, all colleagues working for projects of this type in their own districts found him helpful, imaginative, and productive, and particularly effective on the House Appropriations Committee. So his service, his influence and his reputation went far beyond the bounds of his own congressional district. He was loved, respected and cherished by people throughout the State for the service that he rendered not just to his own district but to his State and his country as well.

George Andrews was certainly a man of many virtues. You will understand my great respect and my deep appreciation for his support to the cause of national defense. George was, of course, a conservative man, strongly opposed to and dedicated to eliminating waste in the Federal Government, including the Department of Defense. But in his view wasteful spending was one thing, but necessary spending to keep our Nation militarily strong and superior to the Soviet Union was quite another. He was a strong advocate that this country always have the capability to rapidly put our troops in the field when necessary and, above all, to support them once we put them there. He was an ardent defender of our vital defense programs against the arguments of those who sought to compromise the military posture of the country in the name of economy. Many times I have heard him say, "Don't fight unless you intend to win."

George was, I am certain, the first veteran of World War II to serve in the Congress, released from active duty in 1944, as a lieutenant (j.g.) in the Navy, to fill the seat in Congress to which he had been elected. The Navy's loss was the people's gain. He was their great champion—he would have been a great admiral.

Ladies and gentlemen, George Andrews was many things to me—a friend, a benefactor, and my representative. We have all heard the saying: "They do not make them

like that any more." I am not sure about that—fortunately there is a George, Jr.—but I am sure that they do not make enough of them like George Andrews.

So all of us owe a great debt to George Andrews. To his wife Elizabeth, to their son George, to their daughter Jane, and to all other members of their families, let us at this memorial luncheon rededicate ourselves to the convictions of George Andrews, that this great State and this great country continue to flourish and grow. He would be forever proud and happy that we do so. Thank you.

PRESIDENT DEFENDED FOR HIS EFFORTS TO END VIETNAM WAR

HON. JOHN J. DUNCAN

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 1, 1972

Mr. DUNCAN. Mr. Speaker, there is an old adage, "he who hesitates is lost." Our experience in Vietnam clearly bears out the wisdom of this remark. Now that President Nixon has taken a bold new step to chart a decisive course of action in Vietnam, his critics want a return to the hesitation policies of the past. A constituent of mine has a most eloquent answer to these critics. The following letter to the editor of the Knoxville News Sentinel provides a refreshing answer to the critics who have put their heads in the sand thinking it will make the war go away:

PRESIDENT DEFENDED FOR HIS EFFORTS TO END VIETNAM WAR

EDITOR, *The News Sentinel:*

First let me say we know the horror, agony, the grief and heartbreak of war. My husband served overseas in Wilson's World War I. Our only son was killed in action in Roosevelt's World War II. Survivors of his regiment said "our ammunition was rationed."

We had Truman's Korean War. He refused to allow bombing north of Yalu River. When Gen. MacArthur wanted to win, and could have, he was relieved of his command and ordered home. Truman's no-win policy in that part of the world created conditions that gave aid and advantage to the Communists and greatly strengthened their position.

In 1960 Kennedy campaigned on the slogan "we lost prestige under Eisenhower," but during those light years we were involved in no war, the Korean treaty was signed and not one single American serviceman lost his life in combat.

A short while after Kennedy's inauguration, he involved us actively in Vietnam. Our first casualty was less than a year after his administration began—almost 11 years ago.

In 1964 Johnson called his opponent a "warmonger." Goldwater thought we should and could win the war in Vietnam. But soon after Johnson's inauguration he forgot all that, and escalated our forces to over 500,000. Did we win? No, still the same old no-win policy. On and on the fighting, the casualties, killed and wounded, mounting, mounting.

The U.S. was involved in all four of these wars, years and years of fighting under Democratic presidents—Wilson, Roosevelt, Truman, Kennedy, Johnson. This is history. The record is there to read.

In 1969 Richard Nixon became President. Immediately he was damned, criticized, blamed for all the stupid mistakes and bad judgment of the almost eight years of the Vietnam War. Nixon returned hundreds of thousands of our servicemen. Sanctuaries built up under Kennedy and Johnson were destroyed and our casualties greatly reduced.

Each time Nixon was greeted with criticism demonstrations. Why? Is it wrong to try and win a war? Is it wrong to try to protect our forces committed to combat?

When military targets have been bombed in North Vietnam, the hue and cry has been awful. But when civilians are ruthlessly slaughtered in the South, hospitals, theaters, hotels, etc., hit—no outcry. The April 27 News-Sentinel reported "shrapnel rained on refugees in siege of Quang Tri City"—the bleeding hearts did not object.

The President's talk as he outlined his blockade and mining plan was magnificent. But he was greeted with violent criticism in the House and Senate—with destructive threatening mobs and demonstrations. Sixty thousand American forces are still in Vietnam, there are thousands of our men held prisoner. Don't Americans of all parties want our men safely home? It's hard to understand, but in trying to end a war he did not start, Nixon is criticized, damned, even threatened with impeachment.

What side are these people on?

E. A. CRAIG.

WHERE ALL THE TAX DOLLARS GO—RARICK CONTINUES HIS REPORT TO HIS PEOPLE

HON. JOHN R. RARICK

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 1, 1972

Mr. RARICK. Mr. Speaker, I recently reported to my people on some of the radical and extreme uses of the American taxpayers' dollars and the credit of our country. I insert the report at this point:

RARICK CONTINUES HIS REPORT TO HIS PEOPLE ON WHERE ALL THE TAX DOLLARS GO

President Nixon, while encouraging continued one-third U.S. funding of the U.N. budget as a necessary expenditure to provide a public forum for leaders of the world to meet and talk over peaceful solutions to our problems, repudiated any effective role of the U.N. by personally holding private meetings with the Communist party leaders in Peking and Moscow. The expense of air transportation, security, and other arrangements, as well as the absence of the President from his job in Washington, all represent a great expense to our government. While much of the expense can not be itemized, some of it has been made available—even though it has received little publicity. For example, on the trip to Red China, the Chinese reportedly demanded an advance deposit of 6.6 million dollars in U.S. gold before they would agree to the meeting and allow the conference to be televised live to the U.S. Then, in the exchange of the gifts, the cost of transportation for the musk ox to China and bringing the pandas to the U.S. was $98,000, while facilities to house the pandas in Washington will cost the taxpayers over $500,000—just to be able to exhibit the gift from the Chinese Communist party. What the American people have received in turn other than loss of face and loss of friendship around the world still has not been evaluated in dollars and cents.

In Russia, where our President offered a toast in Russian to "eternal glory to heroic Leningrad", he presented to the Soviet Party Chieftan a 1972 Cadillac donated by American capitalists, and to seal the new arms limitation treaty gave to the Soviet President and Premier rifles with special telescopic scopes and appropriate ammunition.

Traditionally peace-signing ceremonies are accompanied by the release of white doves, but apparently the President's advisers had done their homework and were aware that the Communists Podgorney and Kosygin were old time revolutionaries whose pet hobby is firearms. The symbolic offering of guns to an opponent sounded more like a surrender ceremony than agreement for arms limitations.

The most publicized aspect of the President's Russian trip has been the announcement that he has entered into a signed agreement with the Communist Party leaders which will slow down the arms race and lead to world peace and understanding. Little is told to our people to remind them of the past experience with Communist leaders who never sign an agreement unless it is overwhelming in their favor; and should it end up to their dissatisfaction, tear up the agreement declaring it simply a piece of paper. What did the American people really get out of the extra expense of having the President go to Moscow because the U.N. is inept? At most, we have given our people a sense of false security, and we have given the Russian leaders the added advantage of time.

So we may see first hand who made the concessions and who got the advantage at the Moscow summit. The following statement from the protocol accompanying the agreement is indicative:

The U.S. may have no more than 710 ballistic missile launchers on submarines (SLBMs) and no more than 44 modern ballistic missile submarines. The Soviet Union may have no more than 950 ballistic missile launchers on submarines and no more than 62 modern ballistic missile submarines.

In other words, the treaty limits the U.S. to 44 ballistic missile submarines while the Russians get 62, and our country can have no more than 710 ballistic missile launchers while the Russians agree to limit theirs to 950.

In traditional American do-gooderism, we are to give the Russians the advantage of 18 more ballistic missile submarines and 240 more missiles—that is being ballyhooed as a great step toward maintaining arms balance—parity. I leave it to you to decide whether you have received your dollar's worth as well as whether you think this was a fair settlement or a prelude to suicide. Surely no one can deny that implementation of this agreement will reduce our country to a second-rate military power.

Another program receiving national attention these days is revenue sharing, or more appropriately, under the bill now pending in Congress, the State and Local Assistance Act of 1972. The pending bill supposedly would return some of the taxpayer's money to the states, cities and local communities with populations of 2500 "for high-priority expenditures, to encourage the states to supplement their revenue sources, and to authorize Federal collection of State individual income taxes." The bill, H.R. 14370, would redistribute $5.3 billion to states, of which $3.5 billion would go to the local governments in 1972, increasing to a level of $6.5 billion by the fourth succeeding year.

Revenue sharing, that is return of federal funds to state and local agencies, is nothing new, since federal funds have been shared for many years in fields of education, highway construction, airports, welfare. By now, revenue sharing has reached every facet of our endeavor accompanied by its ever-increasing federal control and regulation. For example, in fiscal 1971 our State of Louisiana received $163,990,062 in federal assistance or revenue sharing.

The latest revenue sharing program has been tailored mainly to ease the financial crisis in our bigger cities, which has been caused to a large degree by federal controls, regulations, and orders, thus causing the flight of many of the people from socio-economic experiments, ever-increasing taxes, and refusal of the local people to increase their taxes to pay for politically motivated federal programs. As a result of the mass

migration from our cities and the desire of the local leaders to participate in expensive federal programs and prestige projects, most cities and municipalities can not keep pace with revenues meeting expenditures—the money's not coming in as fast as it's going out.

Certainly the plight that the mayors and local officials find themselves in makes it more difficult not to grasp at the latest federal carrot which would only cost the taxpayers $5.3 billion. Especially is this so when we consider that in devaluing the dollar last month, the taxpayers were forced to give the international banking institutions $1.6 billion—roughly ⅓ as much as the cost of revenue sharing—for the right to cut the buying power of the dollar. Nor does it make sense to continue pouring out foreign aid to every country around the world at a rate of $13,500,000,000 in 1972—almost 2½ times as much as the cost of the revenue sharing—to participate in every international share-the-wealth program when our own people can use it for improving our own community and helping our own people—who, after all, are the ones who create the wealth.

But the revenue sharing bill, H.R. 14370, is again another political ploy designed for people-control and political party-domination.

Here is a table showing the proposed annual revenue sharing to the parishes in our District:

Ascension	$367,924
East Baton Rouge	5,701,615
East Feliciana	284,155
Livingston	401,287
St. Helena	178,571
St. Tammany	561,129
Tangipahoa	479,756
Washington	202,225
West Feliciana	187,664

On a per capita basis we in Louisiana would receive $22.58 while New York State would receive $35.20 per person.

This is not fair, nor is it corrected by the persuasion that if the people in Louisiana raise their State income taxes, then in return they can receive a bigger share of the federal pie.

While the states' portion of the revenue sharing is being promoted as having no strings attached, the bill restricts the use of the local share to public transportation, public safety and environmental protection—areas in which federal monies have already been appropriated.

Our people also realize that with federal funds come federal controls. Perhaps no more obvious a reminder of this is that the formula under the Revenue Sharing Act is based upon state income taxes, and the bill's title says "to encourage the states to supplement their revenue sources"—in other words, the higher the people tax themselves, the more money they would receive under the federal formula. So it is not surprising that Title II of the bill itself reads, "Federal collection of state individual income taxes. . ." The bill provides that the state can agree that the federal government preempt or take over all of the state income tax collections and give all civil and criminal powers to the U.S. Attorney and Federal Judges in lieu of state officials. In fact, Title II even provides a model state income tax law so that all states might have a unified tax system.

As written, the law would authorize Internal Revenue people full access to all state income taxes for the purpose of verifying reports and collections. The big question posed by this section is what will happen when the federal government has collected the states' income taxes and the federal bureaucracy decides that the state is not in compliance with some guidelines or federal policy cuts off the state's funds and leaves the state without any money to finance its own operations adequately?

Perhaps the more interesting and enlightening fact is that the Ways and Means Committee of Congress, which passed out the Revenue Sharing Bill, will be holding hearings on increasing the national debt at or near the same time that the Congress will be debating the Revenue Sharing Bill.

The national debt—the amount that the President can borrow against the full faith and credit of the U.S. taxpayers—now has a maximum ceiling of $450 billion, which means that the interest alone on the outstanding debt will exceed $25 billion this year. Think of it—$25 billion which won't create any jobs or fund any Federal programs—almost five times as much as the cost of the Revenue Sharing Program, yet few people express any concern about this fiscal irresponsibility. The new debt ceiling request will probably be for $30 billion more, or a total national debt authorization of $480 billion. The budget contained a programed deficit of $44.7 billion for this year. Already there is talk about the new increase in Federal income taxes following the Presidential election this fall.

Certainly our country and our people have the wealth and productivity to provide for everything that the people themselves want and are willing to pay for; but we cannot continue to support every international boondoggle nor supply our fighting men to combat every brush fire, and still expect to fulfill the needs and desires of our people at home. Fiscal responsibility must receive high priority.

There needs to be an accountability and only time will tell whether it will come from the people or the bureaucrats.

JOE YOUNG AND PHIL SHANDLER HONORED FOR LABOR WRITING

HON. THADDEUS J. DULSKI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 1, 1972

Mr. DULSKI. Mr. Speaker, the Washington-Baltimore Newspaper Guild, at its annual award ceremony, recently honored Joseph Young and Philip Shandler of the Washington Star for outstanding labor reporting.

As one who follows closely matters of concern to Federal and postal workers, I feel the recognition is richly merited. They were the first winners of the Frank C. Porter Memorial Award in the newly-established category of labor reporting.

Through the medium of the Star's syndicated Federal Spotlight column, as well as through individual stories, Joe Young and Phil Shandler work as a top-notch team in covering the wide-ranging developments as they apply to this large group of workers located throughout the Nation, the greatest concentration being here in the Washington area.

The Federal complex is ever-changing in its makeup, As a result, there is intense interest in the progress or lack of progress on these changes and their impact on the employees and their families, as well as on individual communities.

In keeping close tabs on this broad front, Joe and Phil leave no stone unturned and it is gratifying to me to learn that they have been given due recognition by their peers.

PUTTING POLITICS FIRST, AMERICA SECOND

HON. C. W. BILL YOUNG

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 1, 1972

Mr. YOUNG of Florida. Mr. Speaker, Americans once prided themselves in putting America first and partisan politics second; we said that partisanship stopped at the edge of our shores. Unfortunately, this is no longer the case today. Almost daily we see examples of ambitious politicans seeking to divide America in an effort to create a climate favorable to their political ends.

Some of the so-called leaders who were responsible for getting us so deeply involved in the tragic Vietnam conflict are now screaming to end our involvement regardless of consequences while ignoring the success of President Nixon in dramatically reducing our participation in combat there. Having erred in the past, they would seek to erase their culpability by erring as grandly in the opposite direction.

The Congress was treated to such a display recently with the testimony of Clark Clifford, former Secretary of Defense, before the House Foreign Affairs Committee. Mr. Clifford's astonishing testimony was placed in proper perspective by Crosby S. Noyes in a column in the May 28 edition of the Washington Star.

Here, for the consideration of the Congress, is what Mr. Noyes had to say:

[From the Washington Star, May 28, 1972]

CLARK CLIFFORD AND THE LOGIC OF PARTISANSHIP

(By Crosby S. Noyes)

One can only sympathize with Secretary of State William P. Rogers. The gratuitous advice we are getting on how to get out of the war in Vietnam from the people who were chiefly responsible for getting us into the war in the first place is both astonishing and a bit sickening.

Rogers' comments on the subject were provoked recently by the testimony of Clark Clifford to the House Foreign Affairs Committee. Clifford, a sometime hawk in the Kennedy and Johnson administrations and briefly secretary of defense, has had several profound changes of heart since his days as a prominent adviser of presidents.

Today he is generously willing to share the blame with everyone for the mistakes of the past. In his current view, there never have been any stakes of any real consequence to the United States in Southeast Asia and the whole affair was the result of an unfortunate misunderstanding. His present concern is that President Nixon should face up to the consequences and forthrightly admit a total defeat in Vietnam, Laos and Cambodia.

Clifford is more than ready to concede that Nixon's policy of Vietnamization—including the withdrawal of a half-million American troops from Vietnam—has been a dismal failure. Far from a prescription for ending American involvement in the war, he argues, it is a formula for insuring its indefinite continuation. As he sees it—perhaps accurately—it has not strengthened the Saigon government to the extent that it can withstand future assaults from the North, nor weakened it sufficiently to force a settlement on Hanoi's terms.

The former secretary of defense is quite definite about the way President Nixon should deal with the situation. He should not

support the Saigon regime against an all-out attack from the north—particularly if this support threatens our relations with China and the Soviet Union. Resistance to the Communist offensive—including the mining of the harbors of North Vietnam—is, in his view, a dangerous exercise in futility.

The alternative which Clifford suggests is wonderfully simple.

The United States should set a "date certain" for the final withdrawal of all American military personnel from Indochina and at the same time should end all ground, naval and air support for the Saigon regime. In return for this, the North Vietnamese would (it is hoped) return all American war prisoners and agree to refrain from attacks on departing American troops.

Such an arrangement, in Clifford's view, would bring about a prompt end of the war. It is his "firm conviction that if this plan were agreed to, political forces would surface in South Vietnam that would institute negotiations between the Vietnamese leading to an overall settlement." And that settlement, needless to say, would be on terms dictated by Hanoi.

Clifford, of course, is not by any means alone in recommending a sellout of South Vietnam. Most of the Democratic candidates are calling for much the same thing, including Sens. Hubert Humphrey and George McGovern. The change that President Nixon is prolonging the war indefinitely by refusing to arrange for the defeat of the South Vietnamese army is fairly standard Democratic logic at this stage of the game.

One also can understand the politics of the argument well enough. If Richard Nixon were to take the advice of his Democratic critics and lose the war between now and November, he almost certainly would be defeated for re-election. And since he is not at all likely to do any such thing, his Democratic critics have nothing much to lose in making dire predictions about the course of the war and the American involvement in it.

Partisanship, after all, has a special logic of its own. It is not exactly a rare thing in politics that our elder statesmen, who can perform brilliantly when their own party is in power, are perfectly capable of repudiating all of the principles they have stood for when they find themselevs in opposition. Whether a given policy is good or bad, it seems, is largely a question of whether one wants it to succeed or hopes that it will fail.

Clifford, apparently, has his heart set on failure. So far as he is concerned, it is unthinkable that South Vietnam should survive as an independent country, that the North Vietnamese should fail in their current offensive or that Nixon should succeed in extricating the United States from the war without losing it.

In order to assure failure, he is ready to repudiate everything that this country has tried to do over the last seven years at an enormous cost of blood and treasure and deliberately sabotage policies which he himself helped to create. It is not exactly surprising that Secretary Rogers finds this advice both bewildering and somewhat distasteful.

THE PRESIDENT'S ADDRESS

HON. CRAIG HOSMER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 1, 1972

Mr. HOSMER. Mr. Speaker, in his address this evening, the President seemed genuinely proud to have helped manuever East and West to positions where genuine peace for many years is possible.

He warned Congress and the Nation against blowing it.

For example, he hinted that his programs for improved strategic systems such as the *Trident* submarine and B–1 bomber must be supported, otherwise time will erode away the mutual self-interest now present in the SALT arrangements.

SECOND THOUGHTS—THE U.S. SUPERSONIC SUPERGOOF

HON. THOMAS M. PELLY

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 1, 1972

Mr. PELLY. Mr. Speaker, Congress voted a little over a year ago to kill the supersonic transport program which was already well underway at the time—an action that set this Nation on the road backward in international aviation.

The real consequences of this ill-timed action are now being felt—and I am sure that many of my colleagues who voted against the SST must now be having second thoughts. I insert into the CONGRESSIONAL RECORD an article from the May 28 edition of the New York Sunday News on this very point.

The article follows:

SECOND THOUGHTS—THE U.S. SUPERSONIC SUPERGOOF

(NOTE.—A former Air Force officer and a nationally recognized aviation writer and editor, Ansel E. Talbert was one of the first U.S. newsmen to make a flight in the British French Concorde SST at Mach 2—1,350 miles an hour.)

(By Ansel E. Talbert)

A little over a year ago Congress killed the supersonic transport, and by this time at least some of those who voted its demise must be having second thoughts.

Into the United States SST prototype development program had gone eight years of intensive research and actual work on its hardware by some of the nation's top scientists and engineers.

Winding up all contract and other details of the eight-year-old project is costing something over $100 million more than completing it would have, according to Department of Commerce testimony.

The immediate consequences of Congress' action to the U.S. economy, the U.S. aerospace industry's competitive position in overseas markets, and the industry's morale were extremely bad—and in certain cases appalling. These results still are unfolding.

The long-range economic implications of what has taken place are freightening. Beyond question, they have blocked the creation of tremendously important sources of revenue which during the next two decades could have been applied to social needs.

Particular victims of the SST cancellation are the U.S. taxpayers, approximately $1.2 billion of whose money was blown with nothing to show for it, and that group of aircraft industry workers having the highest skills and education. The latter includes many thousands who have earned through years of effort a real stake in their respective communities; who never before have been out of work for a lengthy period, and who would be invaluable assets to future high-priority projects.

Today, a large part of that group has exhausted unemployment insurance and actually is on the verge of bankruptcy and hunger.

The program that Congress killed was initiated in 1963 by President John F. Kennedy, who called an American SST "a national objective . . . essential to a strong and forward-looking nation."

A special team studying future goals for U.S. civil aviation, which President Kennedy had appointed immediately after taking office in January, 1961, strongly recommended "intensified efforts" to produce such an aircraft. Informal SST studies had been going on since 1958.

The SST development program which the 92d Congress killed by cutting off the funds for continuing it, would have given the U.S. two prototypes of what had been designed to be the world's largest, fastest and most advanced and economical SST and paid for 100 hours of flight testing of them.

Tests would have started with a maiden flight by one of the prototypes late this year. This testing would have provided many specific answers to important questions relating to SST noise, economics and influence on the environment, for which the U.S. now will have to depend on foreign sources.

Three foreign nations—Britain, France and the Soviet Union—have benefitted immeasurably from cancellation of the U.S. SST prototype program. It gives them a 10-year lead over the U.S. in this crucial field of future development.

Although a bevy of anti-SST critics from the U.S., headed by Professor John Kenneth Galbraith of Harvard, have gone abroad to appear on European TV and to hold press conferences attacking the French-British Concorde SST—possibly to cover their bets against the U.S. SST project—testing of the Concorde has moved along swiftly and without hitch.

(The Concorde, built mostly of aluminum alloys, is designed to carry 128 passengers approximately 4,000 miles at a speed of 1,350 miles an hour, while the U.S. SST, constructed largely from titanium, would have carried 298 passengers over a similar range at 1,800 miles an hour.)

The two Concorde prototypes, now joined in the skies by the first preproduction model, already have amassed over 250 hours at Mach 1 (faster than sound). A total of 16 Concordes are now being built, with key assemblies ordered built for six more.

Nearly half of this current Concorde time has been at Mach 2 (roughly 1,300 miles an hour) or on the Mach 2 borderline.

On Thursday, Michael Heseltine, Britain's Minister of Aerospace, announced in the House of Commons that British Overseas Airways Corp. had just ordered five Concordes, and taken options for eight more—and planned to put the supersonic aircraft into regular passenger service in time for the summer vacation travel season of 1975.

French sources close to France's Transport Minister Jean Chamant disclosed that a similar order from Air France soon would be forthcoming.

Keith Granville, chairman of BOAC, revealed that initial supersonic flight schedules of his airline called for two round trips a day between New York and London, plus service between London and Sydney, Australia, and London and Johannesburg, South Africa, and between London and Tokyo.

BRANIFF IS EVALUATING CONCORDE

In the U.S., Harding Lawrence, chief executive officer of Braniff International, revealed that his airline was stepping up final evaluation of the Concorde "from an engineering and economic standpoint." A Braniff pilots' team has flown the French-British SST and pronounced it "an outstanding aircraft, aerodynamically and technologically."

If the latest evaluation proves to be as positive as that of the pilots, Braniff will

make a decision "whether to buy one, two or three Concordes," Lawrence said. Braniff already has three Concorde delivery positions.

Lawrence is known to believe that the Concorde is a natural for Braniff's long intercontinental overwater routes connecting New York, Miami and Los Angeles with Lima, Peru, and ought to be a real money-maker on them. It would cut the New York-Lima flying time from seven to three and one-half hours and chop other times about in half.

There have been allegations from anti-SST groups that neither the Concorde nor any other SST will be allowed to operate into and out of U.S. airports.

But Jack Shaffer, head of the Federal Aviation Administration, says there is no national law or regulation which would bar such flights, and a local attempt by the Massachusetts Legislature to ban the SST was declared unconstitutional by the Massachusetts Supreme Court.

Not too much is known about the Soviet Union's Tupolev Tu-144 SST—almost exactly similar in design to the Concorde, but slightly smaller. It is certain, however, that its test program, although far behind the French-British one in Mach 1 and Mach 2 hours flown, is going ahead steadily.

The Russians are believed to have started out with two prototypes and cracked one up (although they deny the latter). In any event they will have three flying before this year's end. Already they are carrying out intensive sales efforts, including public advertising, in both Communist-aligned and non-Communist nations.

The fact that France and Russia *already had* supersonic transports and undoubtedly would move into the international market with them got scant attention in the almost hysterical anti-SST campaign in this country.

Probably the most amazing aspect of the fight that killed the SST was the wide publicity consistently given by several influential publications to scare stories based on highly iffy assumptions, which had little or no solid scientific backing. These often came from "scientists" having fairly impressive academic credentials and connections, but who usually were not in the field about which they were testifying.

A meteorologist having no formal medical training who had urged an earlier congressional committee to look into the possibility that visitors from outer space had deliberately caused the famous New York power blackout, was one who gave extensive and detailed SST testimony.

It was he who suggested that a fleet of SST's operating at 70,000 feet or so, might bring about atmospheric changes which would cause widespread skin cancer.

Economics professors turned on at length about such matters as technical design aspects of the SST, political scientists went on about environmental considerations, and so on.

It would require several volumes to carry on a discussion or do a detailed rebuttal of allegations such as those that SST's would start a new Ice Age; would melt the polar ice caps and cause oceans to rise; would generate sonic booms which would smash buildings, scare animals and marine life and create "ecological wastelands" by actually destroying fauna and flora.

The testimony of some recognized scientific authorities of the highest integrity and repute are worth considering as a means of putting the various anti-SST statements in their proper perspective.

On environmental matters, Dr. Will Kellog, chairman of the work group on climatic effects at the Massachusetts Institute of Technology, and associate director of the National Center for Atmospheric Research said:

"I am very much disturbed over . . . gross exaggerations and scientific misstatements regarding the SST's potentially harmful effects upon the atmosphere and man's environment.

"There is no environmental reason . . . to delay construction of two prototype U.S. SST's."

ACOUSTICS EXPERT DEFENDS SST

On noise, Dr. Leo L. Beranek, a former Harvard University physicist who has devoted most of his life to acoustics and noise prevention, testified that "there does not appear to be any technical reason why a commercial supersonic transport cannot be built which will be acceptable with regard to noise."

The "sonic boom problem" has become somewhat academic. This is because airlines, manufacturers and national government and state officials all have been in agreement for several years that SST's should not operate supersonically over land at any time.

On the charge that SST operations would congest existing airports, pollute the air above and between them and cause "community noise," the Airport Operators Council International wrote the President of the United States:

"We see the SST program as a unique opportunity to reduce these, while improving air transportation service through an orderly, well-planned program involving international coordination among airport and airline operators, manufacturers and government."

Most scientific evidence indicates that the "community noise" of the U.S. SST—as well as that of the European models—will be about half that of existing jet transports.

Sen. Charles Percy (R-Ill.) was the chief exponent of an argument that the airlines really didn't want an SST. His views would appear to be in conflict with the fact that 26 of them put $81 million, which they could well have used elsewhere, into the SST program. (They got it back after cancellation.)

And Stuart Tipton, head of the Air Transport Association, to which nearly all of the major U.S. airlines belong, said in reply:

"The airlines are deeply interested in an SST. I have discussed this in detail with the presidents. . . . They want the airplane. They particularly want the American SST."

The senators and representatives who voted to kill the SST might ponder on the fact that best estimates are that one SST carrying 300 passengers at 1,780 miles an hour (Mach 2 plus) would give off about the same amount of pollutants per mile as three automobiles traveling at 60 miles an hour.

In France, there was no real opposition to the Concorde. Among its staunchest defenders was L'Humanite, official organ of the French Communist party. The powerful CGT trade union group in France, which the International Association of Machinists and other U.S. labor groups describe as "Communist dominated" also backed the Concorde to the hilt.

A CGT pronouncement relative to the Concorde said solemnly, with a "nobody-here-but-us-patriots" air, "Maintaining our aerospace industry in the first rank at the international level is important to [France's] national independence."

In the U.S., cancellation of the SST simply sent the taxpayers' money down the drain and produced next to nothing in return. The major salvage items have been some research projects and investigative studies.

William Magruder, the brilliant test-pilot-engineer-designer who headed up the SST program when it was killed and now is serving in the White House as a special science advisor to President Nixon, believes that it would require between $1.5 billion and $2 billion to reconstitute the two-prototype project.

There would be no credit carry-over for a future U.S. SST from the $1.2 billion already thrown away. Skilled scientific teams whose members had been working together for years have been broken up; advanced technology hardware melted down or sold for junk, and participating company programs wrecked.

CANCELLATION CANCELLED JOBS

Within a month after the cancellation became effective on March 31, 1971, between 13,000 and 15,000 aircraft workers, scientists and engineers were thrown out of work. This caused and still is causing great personal distress.

The three largest groups of SST unemployed are in Seattle, headquarters of the Boeing Co., prime contractors for the SST airframe; Evandale, Ohio (near Cincinnati), where the General Electric plant responsible for the American SST engine design is located, and in New York's Suffolk County, Long Island.

Suffolk County is the location of the Republic Division of Fairchild Corp., largest single subcontractor on the SST project.

But there were subcontractors and suppliers in at least 40 states, and all have felt cancellation effects ranging in degree from mild to extreme.

Floyd E. (Red) Smith, international president of the International Association of Machinists and Aerospace Workers, the world's largest organization of aerospace workers, puts it this way:

"The SST layoffs have set off a chain reaction of unemployment in supporting industries. In the sub-contracting companies, tool and die makers, machinists, lathe operators, electricians, engineers and many others have lost their jobs. And this goes far beyond the companies involved in the SST program directly. It is hurting car salesmen, home builders, clothing stores and a great many others."

Smith estimates that the prototype program, although involving around 14,000 workers and scientists directly, actually would have generated at least 42,000 jobs. Had there been a decision to go ahead with production after a thorough testing of the two U.S. SST prototypes, some 50,000 workers would have been employed when the production really got going. A "ripple effect" would have created 100,000 more jobs in supporting industries, Smith said.

During the past year, however, the unemployment situation has become increasingly grave. Testimony a few days ago of Rep. Brock Adams (D., Wash.) whose congressional district includes the hard-hit Seattle-Kings County area, agrees with many other surveys that the situation is getting worse instead of better.

Backing his views are the findings of the U.S. Senate's "Select Committee on Nutrition and Human Needs" headed by Democratic George McGovern of South Dakota—now a front-runner for the Democratic presidential nomination.

McGovern's committee (the senator, ironically voted consistently against the SST program) gave its findings in a detailed printed record issued last November. This stated that "it is not unfair to call Seattle an area of 'economic disaster'."

The report added that "the present situation is murky and the future looks dark", and that "there are no immediate prospects for a rapid improvement in the areas' economy."

It should be pointed out that by no means all the distress in Seattle can be attributed to the SST cancellation. There had been previous cuts in the Boeing work force due to a fall-off of military orders and the tapering off of the Boeing 747 jumbo jet production program.

George Meany, the crusty and outspoken head of the AFL–CIO, estimates that the ultimate long-range impact of the U.S. *not* competing in the SST field will cost American industry at least 500,000 jobs. He accuses Congress of "exporting jobs abroad" and fears that this may well turn out to be the biggest U.S. export connected with the SST.

What has been the effect of the SST cancellation on the East Coast? At the Fairchild Corp. factories at Farmingdale, L.I., and at Hagerstown, Md., a total of nearly 1,000 have been laid off—most of them at the New York plant. The company, which had obtained about $35 million worth of SST subcontracts, also didn't hire the additional help necessary to put a programed 1,600 to work on SST subassemblies this year.

As at Boeing, the cancellation hit Fairchild at a time when it was feeling a decline in both civil and military aircraft business. Its management was hopeful of getting involved in a long-range project which would keep its work force together, and start things moving upward again for the company.

NO ROOM FOR OPTIMISM

The current work force at both places today is 3,200 (2,700 of them at Farmingdale), and it may drop before long if nothing turns up.

It is worth mentioning that since the SST cancellation, Boeing has worked out an agreement with Aeritalia of Italy for a joint program to design and build a large short-takeoff-and-landing (STOL) civil air transport aircraft. This will help to keep its top design team intact and busy. If things work out during testing, there will be a production line both in Seattle and in Milan.

Other firms which worked on the SST have done likewise or are presently exploring the possibilities.

Despite these immediate advantages, such moves might serve to reduce the 85% hold which the U.S. aircraft manufacturing industry now has on the world civil aircraft market, and depress it down to 50% or eventually 35%.

It is discouraging to those in the U.S. industry that U.S. civil aircraft exports will decline this year for the first time since 1964. The exports will amount to about $2.7 billion, down 39% from 1968 and 10% below 1971.

Thus, while the mock-up of the U.S. SST gathers dust in its hangar, while the U.S. falls behind in vital future development and thousands of scientists, engineers and technicians look for other work, France and Russia are gearing up production of the Concorde and the TU–144 in a drive to dominate a field in which this country once was supreme. The question remains: was killing the SST worth the cost?

THE BURUNDI MASSACRE

HON. JOHN R. RARICK

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 1, 1972

Mr. RARICK. Mr. Speaker, the usual antagonists of so-called minority rule in Africa have been conspicious by their silence as to the mass slaughter of an estimated 50,000 people in the African tribal State of Burundi.

Perhaps the reason for the silence is that Burundi is a minority-controlled government which favored by the usually vocal opponents of minority-controlled governments in Africa.

I include related newsclippings which follow:

[From the Washington Post, May 31, 1972]

BURUNDI SAYS 50,000 KILLED IN CIVIL STRIFE

(By Stanley Meisler)

NAIROBI, May 30.—The government of Burundi has acknowledged that at least fifty thousand people have been killed in a month of fighting in the little land-locked Central African country ruled by the Tutsi.

In a broadcast monitored in Kampala, Uganda, Monday night, the Burundi government radio said the victims were killed by about 5,000 foreign-trained rebel invaders and some 3,000 internal criminals who had "a maliciously prepared plan to exterminate the Tutsi." The radio said the victims were "slaughtered" and said some were also "ignominiously mutilated."

The Tutsis, who are also known as Watutsis, make up less than 15 percent of the 3.5 million Burundi people. Despite their numbers, they have ruled the country and its predominantly Hutu people in a feudal way for centuries.

The government denied foreign newspaper and radio stories that there had been a spontaneous uprising by the Hutu peasants at the end of April and that, as a result, the Tutsi-run government was avenging itself with indiscriminate reprisals against the Hutu.

Independent reports reaching here from diplomatic and private sources, however, insist that the Tutsis, incensed over Hutu participation in the uprising, have been systematically trying to wipe out what they consider the "intellectual" class of the Hutus. All teachers, civil servants, clerks, businessmen, students—all those, in fact, with some education—have been the targets of Tutsi vengeance, according to the reports. Non-government sources say almost all the thousands dead have been Hutu.

The broadcast Monday was the first acknowledgment by the government that so many Burundis—whether Tutsi or Hutu—had been killed.

According to the broadcast, 5,000 rebels, trained and armed outside, tried to overthrow President Micombero Michel April 29 in both an attempted coup and extermination of the Tutsi minority. The broadcast said the rebels included both Burundis and followers—evidently Congolese—of the late Congolese rebel, Pierre Mulele. The broadcast did not say where the rebels were trained.

The broadcast said these rebels then linked up with criminal elements within Burundi in their massacres of the Tutsi. According to the radio, they mutilated children, committed unspeakable atrocities against girls, and massacred adults. "All the horrors were only against the Tutsi," the radio said.

[At the United Nations, Burundi Ambassador Nsanze Terence today said "more than 50,000 innocent victims" were killed, Tutsi and non-Tutsi alike, by the rebels who "under the Hutu label launched the genocidal attack."

[Terence said he had been informed by his government that most of the 50,000 deaths occurred April 29, 30 and May 1, before Burundi army forces began their counterattack. He said the rebels initially aimed their attack at "those Burundis whom they believed to be Tutsis."

[But he said when "the authors of this genocide were rejected by the masses, the rebels started slaughtering indiscriminately the people within reach."

[Ambassador Terence said hundreds of rebels were killed in the fighting that followed, and hundreds more arrested. Some of the rebel leaders have already been put on trial, sentenced to death, and executed, he said. The Burundi ambassador said the fighting has now ended and "the situation is totally under control."]

The independent reports reaching here differ on whether the killing has now diminished. Some sources say it was simply because there are few educated Hutus left to kill. Other sources say they see no sign of a moderation of the Tutsi frenzy.

Some sources report a feeling among a few members of the Tutsi elite that the vengeance has gone too far. These Tutsis fear that the Hutus, if pushed too far, may finally turn on their feudal lords and produce a fearsome vengeance of their own.

It is evident that the government of President Micombero is also showing some concern about the adverse foreign reaction to the slaughter. Pope Paul VI added his voice to the mounting foreign concern Sunday when he announced he was sending an envoy to Burundi "to give advice and comfort with the hope that as soon as possible, human and christian sense would prevail over barbarous destruction."

Perhaps to meet the foreign criticism, President Micombero has appointed "councils of wise men" to travel throughout the country and urge Tutsi soldiers and youth organizations to calm their anger against the Hutus. The councils each include an army officer and a prominent private Tutsi.

[From the Washington Post, May 18, 1972]

HUNDREDS DIE, THOUSANDS FLEE—BURUNDI: TRIBAL STRIFE, TERROR

(By Stanley Meisler)

NAIROBI.—Burundi, the last fiefdom of the tall Watutsi tribesmen, is in terror again. For almost two weeks, hundreds, perhaps thousands, of Africans have been slain, and thousands more have fled for refuge. The reason for the new trouble is obscure.

The latest reports reaching here indicate a decline in bloodshed in much of the countryside, but warn of new trouble ahead. The Watutsi minority, who have dominated life in Burundi for centuries, are arresting hundreds of the subservient Hutu masses, blaming them for taking part in an uprising against the Watutsi government. Many Hutus fear a vengeful massacre, and some foreign observers in Burundi believe that the fear is justified. It has happened before.

In fact, the Watutsi have probably started to exact their revenge. There are reports in Bujuanbura, the capital, of gangs of soldiers and other Watutsis searching for Hutus in the poorer quarters of town and killing some on the spot, of Hutu bodies lying in prison, of bulldozers digging mass graves by the airport.

The extent of the arrests of Hutus is shown by what happened at one secondary school last Friday and Saturday. Police came one day and arrested half the Hutu students. In 24 hours, the police showed up again, arresting the others.

In a radio broadcast to the country Monday night, President Michel Micombero said that the situation was "back to normal" in "almost every area of our republic."

Other reports reaching Nairobi Tuesday talked of rebels still fighting in the south, between Bujumbura and the town of Rumonge. Elsewhere, the south had quieted, but the situation hardly seemed normal. According to one report, a French helicopter brought Micombero to the port of Nyanza Lac on Lake Tanganyika on Saturday. He found it deserted. The townspeople still alive had fled to Tanzania.

But the reports reaching here left the important questions unanswered. There clearly has been an uprising against the government in this little land of 3½ million people locked between Zaire (formerly Congo-Kinshasa) and Tanzania in the center of Africa.

But who started it? Who took part? With the government imposing censorship and refusing to allow foreign correspondents in, the questions were difficult to answer. But some facts are known.

In late March, Ntare V., the 25-year-old former king of Burundi, returned home in a Ugandan helicopter. He had been deposed in 1966 in a coup led by Micombero, then prime minister and commander of the small Burundi army. Both the king and Micombero are Watutsi.

SAFETY PROMISED

President Idi Amin of Uganda had ordered a helicopter to fly Ntare to Burundi only after receiving a letter from Micombero guaranteeing the former king's safety if he came home as an ordinary citizen. But when Ntare arrived, the government reneged on its assurances. Burundi officials arrested him and accused him of trying to invade the country with mercenaries.

On April 29, there evidently was an attempt in Bujumbura either to overthrow the government of Micombero or to free Ntare, or both. The Burundi radio described it as a coup attempt and said hundreds had been killed in the fighting, including Ntare.

On the surface, the trouble in Bujumbura seemed like a clash between Watutsi over who should rule the rulers. But fighting soon erupted elsewhere in the country, which meant that the subservient Hutus, who make up more than 80 per cent of the population, were taking part in the uprising.

In fact, refugees in Tanzania have told newsmen that the killings in the south were mostly by bands of Hutus, armed with pangas (African machetes), looking for Watutsi.

HUTU UPRISING

A general uprising by the Hutus could be a fearsome thing. In neighboring Ruanda, where the Hutus also were ruled by a Watutsi minority, 20,000 or more Watutsi were killed in a successful Hutu revolution and its aftermath a decade ago.

But a general uprising did not take place in Burundi last week. In fact, there are reports of Hutu soldiers joining their Watutsi officers in fighting rebels. Despite this, the Watutsi are arresting and killing Hutus as if a general Hutu uprising had been attempted.

To try to get to the bottom of the recent Burundi events, three elements must be considered: the relationship between the Hutus and their Watutsi lords, the squabbling among the Watutsi, and the influence of outsiders.

For centuries, the Watutsi have ruled in a feudalistic way, taking loyalty, services, and goods from the Hutu peasant masses in exchange for the use of Watutsi land and cattle. As in European feudal days, the Watutsi lords also were obliged to protect their Hutu serfs.

RACIAL DIVISION

The division between the two peoples has also been racial, for the Watutsi are tall, Hamitic people from the north of Africa while the Hutus are short, stocky people of Bantu descent.

In many ways, the line dividing these two castes has not been as rigid in Burundi as in neighboring Ruanda. There has been some intermarriage. Micombero, for example, is believed to have some Hutu ancestry.

In addition, Hutus have been drawn into the ruling hierarchy. Some are landowners who rule other Hutus in a feudal way just like the Watutsi lords.

This may be one reason Burundi has not experienced a revolution like that of Ruanda so far.

Nevertheless, there have been at least two attempts by Hutus to overthrow the Watutsi-dominated government since Burundi gained independence from Belgium in 1962.

WATUTSI KILLED

In October 1965, a group of Hutu army and police officers tried unsuccessfully to overthrow the Watutsi king and establish a Hutu republic like that of Ruanda. Several hundred Watutsi were killed in the countryside.

The Watutsi revenge after the failure was brutal. It is believed that between 2,500 and 5,000 Hutus were killed, some by civilian Watutsi vigilantes. Military tribunals handed down 86 death sentences.

The dead included the leading Hutus in the government, and the army was purged of its Hutu officers.

In October 1969, the government accused another group of Hutu leaders of plotting to overthrow Micombero and massacre the Watutsi.

Sixty-seven plotters—all Hutus—were tried, and 26 of them were executed by firing squad in December.

The government's reaction to the recent troubles has been similar to its reaction after the earlier attempted Hutu coups.

On Sunday, the government radio announced that "war councils" had met on Saturday to try a number of people for "massacres, looting and arson." Without giving a number, the radio said there had been "many condemnations to death" and that "the judgments have been carried out."

Diplomatic sources assume that all of those executed were Hutus.

WATUTSI REBEL

The second element underlying the current troubles may be the squabbling among the Watutsi. Micombero, after all, is a rebel among the Watutsi.

The president, who is only 32 years old, is not a member of those Watutsi clans that usually supplied the kings and rulers of Burundi society in the past. As a soldier, he represented the modern, educated elite opposed to the traditional ways of the monarchy.

The troubles could have been ignited by royal followers intent on returning their king to power. The government radio, in fact, has accused reactionary Watutsi of a hand in the rebellion.

But to complicate matters further, Micombero, despite his ouster of the king, has been regarded as too conservative in recent years by a kind of left-wing Watutsi group—youth leaders, junior army officers, students and the educated elite.

The final element may be foreign. Besides talking about reactionary Watutsi the Burundi radio has accused mercenaries and "elements from abroad" of attacking the government.

CHINESE ACCUSED

It has been reported that Micombero, in private talks with diplomats, accused the Chinese and Belgians of taking part in the rebellion.

There also have been reports that Congolese followers of Pierre Mulele, one of the leaders of the uprising in the Congo in 1964, were involved. Bands of armed Mulelists took refuge in Burundi after their rebellion was put down in the Congo.

The possible participation of Mulelists was one reason President Mobutu of Zaire sent a company of troops to Bujumbura to help Micombero. The troops marched down the main street of the capital Saturday, but there have been no reports of them fighting rebels so far.

Piecing toegther all these elements, it is possible to come up with a tentative hypothesis to explain the cause of the new bloodshed: Some Watutsi, perhaps with outside help attempted to oust Micombero and perhaps restore the king, setting off—by design or accident—a Hutu uprising in some parts of the countryside. But this is only an hypothesis.

Whatever the causes, the latest bloodshed has worsened a growing problem in Africa—the uprooting of people because of tribal conflict.

Tanzanian officials report that more than 4,500 refugees from Burundi are being cared for in Tanzanian refugee camps. Other sources say that another 6,000 have crossed the border north of Lake Tanganyika and will show up in Tanzanian camps soon. A few thousand others have crossed Lake Tanganyika to Zaire.

CRIMINALS, JUSTICE, AND PUBLIC SAFETY

HON. PHILIP M. CRANE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 1, 1972

Mr. CRANE. Mr. Speaker, few problems are of greater concern to the American people than that of crime and violence in our society. More and more, honest and law-abiding citizens are made afraid to leave their homes. The incidence of murder, rape, and other crimes of violence is on the increase. Also on the increase is a discussion of prison reform, with some observers advocating that prisons be done away with entirely.

While honest citizens suffer from fear, criminals often proceed with their violations of the law with virtual impunity, believing with good reason that the possibility of escaping successful prosecution is a gamble worth taking.

The concept of a free society is eliminated if citizens are not free to proceed in their daily tasks without the fear that their rights and their physical safety are in imminent danger. Unfortunately, our society has been moving in this direction for some time.

Discussing this problem, Senator JAMES L. BUCKLEY recently pointed out that—

When it comes to matters of law and order, I am afraid that I am very much an ordinary man. I like to go about my business free from the fear that I may be assaulted or robbed. I like to know that my family and friends are safe on the streets and in our homes . . . But should my life or property be endangered by a criminal, I want to have a reasonable basis for believing that he will be apprehended, tried and punished. I want nothing so much, in short, as to enjoy the blessings of liberty unmolested.

But the fact is that a reasonable basis for believing that the guilty will be apprehended, prosecuted, and convicted is more and more losing its foundation. Senator BUCKLEY noted that—

I worry because far too few are sent to prison.

He challenged the idea that crime is a result of environmental shortcomings and that the problem cannot be solved until all social difficulties have ceased and stated that—

It may be theoretically satisfying to some to explain criminal behavior in terms of inadequate education or economic opportunity, but that is a small comfort to a mother whose 15 year old daughter is gang-raped on her way to school, as happened recently in Los Angeles. As Abe Fortas remarked, we cannot wait until we have rebuilt society according to some utopian reformist prescription before dealing with the all too commonplace, everyday savagery of crime.

In his speech, delivered before the Americans for Effective Law Enforcement in Chicago on May 4, 1972, Senator BUCKLEY calls for firm legal action against lawbreakers, is critical of recent Supreme Court rulings, and urges a system of jurisprudence which brings those accused of crime to trial as rapidly as possible.

He quotes Sir Reginald Sholl, the former chief justice of the Supreme Court of Victoria, Australia, who stated:

Many years of experience in the criminal jurisdiction have convinced me of two things—that the deliberate wrongdoer . . . will go on planning and committing crimes so long as he thinks the law is weak and yielding enough to give him a chance to evade it, and that he will have no respect for a legal system which is marked by feebleness in the application of its sanctions.

I wish to share Senator BUCKLEY's important address with my colleagues, and insert it into the RECORD at this time:

ADDRESS BY SENATOR JAMES L. BUCKLEY

I want to talk to you today about the problem of crime. This involves, I must confess, a certain presumption on my part, because I do not pretend to any special expertise in the field of criminal law. When it comes to matters of law and order, I am afraid that I am very much an ordinary man. I like to go about my business free from the fear that I may be assaulted or robbed. I like to know that my family and friends are safe on the streets and in our homes. I like to go to bed at night secure in the feeling that my life or property is not in danger.

But should my life or property be endangered by a criminal, I want to have a reasonable basis for believing that he will be apprehended, tried, and punished. I want nothing so much, in short, as to enjoy the blessings of liberty unmolested by those of evil heart and malevolent design. And, as is natural to those of us who have been born into this great nation, I look to the law as the ultimate foundation of my freedom. But if for some reason the law is unable to protect me, I begin to get worried.

And I must say to you that I am beginning to worry.

I worry because far too few criminals are arrested, far too few convicted, far too few sent to prison.

I worry because, when prison sentences are imposed, prison life becomes a breeding ground for yet further crime.

I worry because criminal trials are unnecessarily protracted, because appeals are far too open-minded, and because the entire process has been converted from a determination of guilt or innocence into a determination of the propriety of police behavior.

I worry because, by such examples, the lawless in spirit are encouraged to become lawless in practice, and because the American people, in growing numbers, have begun to lose faith in their system of criminal justice.

Crime has become as significant a characteristic of modern-day America as any other you are likely to name. Its recent rate of increase is startling, and its impact is pervasive. Between 1960 and 1970, when population increased by only 13%, serious crime rose by 176% and violent crime by 156%. Although in 1971 serious crime increased over the previous year by the smallest amount in nearly six years, the rate of increase in suburban and rural areas was nearly double the national average. This suggests that crime is by no means unique to our major cities and that its growth has a good deal less to do with economic or social disadvantage than is often assumed. Crime has in recent years acquired what Professor Leon Radzinowicz has called "a new physiognomy": the most telling rate of increase is among the middle classes, and it tends increasingly toward crime committed for its own sake, for the sheer pleasure of it. To that must be added yet another relatively new phenomenon: the direct relationship between crime and narcotic addiction.

Figures from New York City indicate that something like 50% of all robberies and burglaries are narcotics-related, and comparable figures could probably be adduced for most of our other large urban areas.

The reasons for the growth of crime are as complex and as varied as the culture of the modern world, and we are yet a long way from discovering how and why we have come to our present impasse. Good and decent men can and will disagree, as they have always disagreed, about the ultimate causes and cures of crime. It would appear that we know a good deal less about the causes of crime than we once thought we knew and, judging from recent statistics, we know a good deal less than we ought.

After all is said and done, after the last sociologist's report is in, and perhaps even after the computers have had their day, I wonder if it is not the better part of wisdom simply to say that criminals commit crime for a bewildering variety of reasons, and that we are yet a long way from understanding why charity and honesty do not win out over thievery and malevolence. In the meantime, the criminal law, whose primary function, after all, is to protect us from the criminal, must get on with its tasks, and it cannot forever, or even for very long, be held in suspension pending the final report on the state of the criminal mentality.

There are those, I know, who say that we cannot hope to remedy the problem of crime without a thorough overhauling of the nation's social and economic system—the assumption being that poverty, ignorance, and racial prejudice are the ultimate causes of crime. Those who so earnestly advance this argument never adequately explain why so much crime is committed by people who are neither poor nor unintelligent or who have never known a day of racial discrimination in their lives. Even if the assumption were correct, and I do not believe that it is, the ostensible "solutions" that follow in its wake are bound to be viewed by the law-abiding public as at best irrelevant to the immediate realities of crime with which they have to cope. It may be theoretically satisfying to some to explain criminal behavior in terms of inadequate education or economic opportunity, but that is a small comfort to a mother whose 15-year-old daughter is gang-raped on her way to school, as happened recently in Los Angeles. As Abe Fortas has remarked, we cannot wait until we have rebuilt society according to some utopian reformist prescription before dealing with the all too commonplace, everyday savagery of crime.

It was contended during the 1968 Presidential campaign, you may recall, that the slogan "law and order" was a "code-word" for racism. This prompted one observer to remark, "Well, if that's the case, I want to know what the code word for 'law and order' is, because that is what we desperately need." The charge of racism, however, disintegrates before the onslaught of fact. And the undisputable fact is that the most common victim of crime is both black and poor. Professor Herbert Packer has estimated that a black ghetto resident is at least 100 times more likely to be victimized by crime than a relatively affluent, white resident of the suburbs. The Associated Press, in an in-depth study, concluded that something like 70–80% of major big city crime takes place within totally black or predominantly black precincts. And to give you one devastating example from the nation's capital, in 1970 in a six-by-six block, all-black area, there were 4,062 major crimes reported, including 17 homicides, 16 rapes, 320 aggravated assaults, 568 robberies, 794 burglaries, 1,035 acts of larceny, and 11 cases of arson. Those are, let me repeat, the figures for a single year and they apply to a six-by-six block area. And bear in mind that these are the figures for *reported* crimes; as to how many others were unreported, God only knows. And I suspect that similar figures could be adduced for comparable areas within most of our major cities.

No wonder, then, that the New York City chapter of the NAACP in 1968 called for "the use of whatever force is necessary to stop crime and apprehend a criminal." No wonder that they proposed a *minimum* 5-year penalty for armed robbery—and without parole, I might add. No wonder that they proposed a minimum 10-year sentence for the sale of narcotics. Far from being "racist", a "get-tough" approach to crime might well be the single greatest contribution that enlightened public policy could make to the lot of black men and women in urban America.

Confronted by the horrible spectre of rising crime, the law-abiding public, both black and white, is understandably alarmed. A Gallup poll only last week revealed that better than two-fifths of the American people are afraid to walk in their own neighborhoods at night. I have no doubt that part of the remedy lies in more and better-trained policemen. The police, however, cannot be everywhere at once, and since the criminal is extraordinarily adept at discovering where the police *aren't*, the solution must lie elsewhere. The hard truth of the matter, however, is that we have too much crime for the police to handle—unless, the courts become more realistic in their handling of criminal cases. Contrary to the old adage, crime in America does indeed pay—and, for those who are prepared to undergo certain manageable risks, it can pay rather handsomely. Professor Gordon Tullock recently troubled himself to make some extrapolations on the rationality of crime as a profession and calculated, on the basis of 1965 figures, that if you commit a crime, your chances of being arrested are only one in seven, and if you are convicted, only one in sixty that you will be sent to prison.

This fact undermines one of the most treasured assumptions of latter-day criminology. The tendency in recent years has been to regard the criminal as a patient and crime as a disease, from which it follows that a "soft" rather than a "hard" approach to crime is the order of the day. For example, Mr. Ramsey Clark, who really ought to know better, recently delivered himself of the opinion that "most people who commit serious crime have mental health problems." Where Mr. Clark obtained this special insight, I cannot say, but if the typical perpetrator of serious crime has "a mental health problem," it is not nearly so severe as that which afflicts those who underestimate the essential rationality of the criminal's freely chosen career.

I cannot help recalling in this regard the story of Willie Sutton, the dapper and ingenious bank-robber whose exploits during the 'Forties and 'Fifties put him on many a front page. Following what proved to be his final arrest and conviction, the sociologists, criminologists, psychologists, and psychiatrists descended upon him in hordes. They pinched and poked and prodded each and every aspect of his life, from toilet-training on, applying each and every available hypothesis they could contrive to explain his life of crime. Almost without exception, these hypotheses began with the assumption that Willie was somehow "abnormal", that his genetic endowment or environmental experience, or some combination of both, virtually compelled him to pursue a criminal career. After months of exasperating study and conflicting conclusions, it suddenly occurred to an enterprising young interviewer to ask a really intelligent question. "Willie," he inquired, "why do you rob banks?"—and clear as a bell, without so much as a moment's hesitation, Willie shot back: "Because that's where the money is."

That simple and honest explanation is worth a world of learned treatises on the cause of crime. Most of those who commit crime do so because they *choose* to do so; and they choose to do so because the potential rewards, relative to the risk of being captured and punished, are highly attractive. Their choice, on balance, is really quite a reasonable one. As Sir Reginald Sholl, the former Chief Justice of the Supreme Court of Victoria, Australia has pointed out:

"It is a fine thing for humanity that men are now beginning to understand more of the human mind and its functions, as in the past 300 years they have come to understand so much of the human body. But in this country, as in mine, enthusiasm in this field outruns judgment, and there is a great tendency to forget that most crime is the product of rational thought by persons whose physical and chemical processes are within

what modern medicine accepts as normal limits."

The tendency, so prevalent in our time, to regard crime as a form of mental illness, is I believe, essentially a humanitarian disguise for the belief that individuals ought not be held accountable for their own acts. There is a peculiar softness to contemporary thought, the defining characteristics of which are the desire to avoid responsibility for the natural consequences of one's own behavior, and the refusal to recognize as legitimate any external constraint on the impulse of one's passions. The strength of this opinion is so great that we behold a widespread avoidance of those things which demand self-sacrifice or discipline, and a seeming unwillingness to impose restraints on others because one is unwilling to impose restraints on himself. This sentiment has had a devastating impact upon the criminal law, not only by eliminating whole classes of acts previously classified as criminal, but, in more subtle but no less potent ways, by robbing society of the conviction that it has the right to demand certain standards of behavoir and that it is entirely justified in imposing sanctions upon those who engage in anti-social conduct. This softness, this hesitation to impose rightful sanctions, bespeaks a fundamental lack of conviction in the ultimate foundations of the criminal law—a lack of conviction that the criminals are quick to detect and exploit. If the law is in any way tolerant or indulgent, criminals will be the first to discover the fact. And should they nevertheless run afoul of the law, they cannot help but form a cynical opinion about a legal system in which punishment, precisely because it is employed halfheartedly or irregularly, is thought of as being employed inequitably.

Once again, I believe the remarks of Sir Reginald Sholl are directly to the point:

"Many years of experience in the criminal jurisdiction have convinced me of two things—that the deliberate wrongdoer . . . will go on planning and committing crimes so long as he thinks the law is weak and yielding enough to give him a chance to evade it, and that he will have no respect for a legal system which is marked by feebleness in the application of its sanctions. . . ."

Sir Reginald reveals precisely the kind of level-headed common-sense that is required in dealing with the criminal element in our midst. That common sense was summed up with characteristic wit and economy by columnist and professor John Roche, who recently remarked: "The beginning of wisdom is to know who is going to shoot you if he gets the chance. From there you can go on to Plato and the classics." This is, I believe, essentially the spirit which animates public sentiment on the subject of crime. It is not a very sophisticated view, perhaps; but it is solid. Hard-headed, perhaps; but not necessarily harsh. And what's more, it is fully compatible with the protection of constitutional liberty—that of society as well as that of the accused. Whatever else our system of criminal justice might be thought of as accomplishing, the one thing it can do, the one thing it ought to do, the one thing that the public has a right to expect it to do—is to find out who the criminals are, see to it that they are prosecuted, and discourage them by whatever means necessary from committing crime again. If it is argued that this central function cannot be performed consistently with the requirements of the Constitution, then it will not be long before the public begins to call for a new Constitution.

How the idea got itself accepted that the effective application of the criminal law is somehow incompatible with due process for the criminally accused is, I must confess, something of a mystery to me. By the same token, I cannot see why the prosecution of criminals cannot be carried out efficiently, and with justice, without endangering the civil liberties of the innocent, for current statistics make it clear that a law-abiding citizen runs a far greater risk of being victimized by a criminal who has been arrested and later released than he does of being unjustly convicted of a crime. This is not to deny that there are hard cases, or that the line between tolerable and intolerable police behavior is sometimes difficult to draw. We deal so often in the criminal law with what are ultimately questions of prudence, and they do not always lend themselves to mechanical resolution. I take it that we are all in favor of due process for the accused, and that we are all in favor of ordered liberty for society as a whole. Unfortunately, there is no piece of constitutional litmus-paper that we can dip into the circumstantial vat to produce the desired constitutional result. Yet, somehow in recent years, the commands of the courts, and in particular of the High Court, have taken on an increasingly rarefied and mechanical character—a fact which has not escaped public attention. Never, I believe, certainly not within my own lifetime, has public esteem for the judicial process been lower; and few factors are so important in this loss of esteem as the widely held opinion that the courts are, as the saying goes, "soft" on criminals. A 1969 Gallup poll indicated that fully 75% of the American people felt that the courts did not deal harshly enough with criminals; and in a second poll two years later, in 1971, that sizeable percentage held firm.

Not altogether without cause, this discontent has been laid largely at the door of the Supreme Court of the United States. Here, it becomes necessary to remark on the revolution in criminal procedure brought about by the Warren Court during the 'Sixties. I use the word "Revolution" with some care. The statistics tell the tale. Between 1960 and 1969, the Supreme Court reversed 63 of 112 federal criminal convictions and, more tellingly, 113 of 114 state criminal convictions. Moreover, as my distinguished colleague, Senator McClellan recently pointed out, the Warren Court evidenced a singular disregard for its own precedent. In 1960 and subsequent years, the Warren Court specifically overruled or explicitly rejected the reasoning of no fewer than twenty-nine of its own precedents in the criminal field, often by 5 to 4 majorities. Eleven of these were overturned in a single year, 1967. Twenty-one of the twenty-nine decisions overturned during this period involved a change in constitutional precedent without benefit of constitutional amendment. And of the remaining eight, seven represented a new reading of old satutory language effected without benefit of legislative enactment. Perhaps most telling of all, as far as the public is concerned, twenty-six of the twenty-nine reversals were handed down in favor of criminal defendants.

Such is the record of the Warren Court in the criminal field. If you draw the inference that the Court during this period seemed somewhat unsure of itself, you are not alone. The lower federal judges are confused; you and I are confused. Even learned professors are confused. Everyone, it seems, is confused—except for the criminal. He knows. He knows that his chances of being arrested are fairly low; he knows that his chances of being convicted are yet lower; and he knows that, even if arrested and convicted, his chances of being imprisoned are lower still. He knows the restrictions which prevent the police from introducing relevant evidence at trial, and he knows that the present state of the law positively encourages the raising of constitutional objections against police behavior. He knows that these objections can be raised before, during or after trial; and, best of all, he knows that such objections are the surest way to obscure the fundamental question of his own guilt or innocence.

The criminal may have a better grasp of the ultimate meaning of the Warren Court's revolution in criminal procedure than all our professors and judges combined. Indeed, the greatest book ever written on the subject of present-day criminal law is the one which would reveal what criminals actually think of such cases as *Mapp* and *Miranda*, and the way in which their behavior is determined by them. The right to counsel and the privilege against self-incrimination are noble rights indeed, but only a man of remarkable ideological fervor would insist that they can be protected only by rendering inadmissible virtually all voluntary statements not made in the presence of counsel. Similarly, only an ideological zealot would insist that the only way to prevent unlawful searches and seizures is to exclude from judicial consideration all evidence, however relevant, obtained by unlawful means.

In a sense the *Mapp* and *Miranda* rulings, along with, perhaps, the unnecessary and excessive expansion of post-conviction remedies, tell the whole tale of public disatisfaction with the Warren Court. There are already indications, as those of you who watch the Court closely will know, that the Court may now be disposed to back off from some of *Miranda's* excesses—and in no small part because Congress, in response to public opinion, declared in the Omnibus Crime Control Act of 1968 that voluntary confessions should be admitted as evidence whether a *Miranda* warning had been given or not. But the exclusionary rule, unfortunately, is with us still, in undiminished vigor, although it is increasingly apparent that the Court's once great enthusiasm for it is on the wane. As Mr. Justice Brennan remarked in a recent case: "Whatever educational effect the exclusionary rule conceivably might have in theory is greatly diminished in fact by the realities of law enforcement work. Policemen do not have the time, inclination, or training to read and grasp the nuances of the appellate opinions that ultimately define the standards of conduct they are to follow. The issues which these decisions resolve often admit of neither easy nor obvious answers, as sharply divided courts on what is or is not 'reasonable' amply demonstrate. Nor can judges, in all candor, forget that opinions sometimes lack helpful clarity."

"It is apparent," said Mr. Justice Harlan in the same case, "that the law of search and seizure is due for an overhauling. State and local law enforcement authorities must find quite intolerable the present state of uncertainty. . . ." He then called for an overruling of the *Mapp* case, which made the exclusionary rule applicable to the states, and of *Ker*, which, as Harlan put it, required the states to follow "all the ins and outs" of the Court's 4th Amendment opinion. I concur with Justice Harlan, and venture the suggestion that the tangent on which the Supreme Court has taken us is predicated, of course, on the assumption that the exclusion of unlawfully acquired evidence will deter the unlawful practice—and it presupposes that the net reward of the object lesson more than justifies the release of the guilty. Because the excluded evidence is only at issue when it tends to establish the fact of guilt. But, as Professor Dallin Oaks has pointed out, the assumed deterrent value of the exclusionary rule has never been adequately demonstrated or disproved—nor, so long as *Mapp* and *Ker* impose a rigid uniformity on the entire country, will it ever be.

Yet, this undemonstrated assumption—that police will be deterred from abuse—has exercised, and in many places still exercises, a talismanic charm over judges and lawyers. Why this should be the case is not easy to say. The exclusionary rule, as most

or you know, is unique to American law; and its application to the states—which means its application to all criminal cases that are brought—is of fairly recent vintage. I find it hard to believe that, prior to *Mapp*, the state of civil liberties in this land was for 170 years so precarious. In this matter, as in a number of others as well, we would do well to learn by English example. The status of civil liberty in England is in no wise poorer than in our own country; and in some respects, it may even be a good deal better. Yet, English criminal law has gotten along quite well without the exclusionary rule, and without a good many other procedural devices that our system in recent years has considered vital to the just resolution of the criminal process. The differences between English and American criminal practice suggest, at the very least, that there is more than one way of dealing fairly and efficiently with those accused of crime. And these differences are worth examining in detail.

I would propose, therefore, that we undertake at the earliest practicable date a systematic comparative study of British and American criminal jurisprudence. The United States and Great Britain share a common legal heritage. We hold in common fundamental concepts as to what is required to guarantee a fair trial and to safeguard the rights of the accused. And we share a bias in favor of the defendant in a criminal trial. For years after independence our procedures remained virtually indistinguishable. But in time they began to diverge; and in recent years in most significant ways.

Today the British are able to find a defendant innocent or guilty within a few months after his arrest; and a certain finality normally attaches upon conviction. In our country, years can elapse between arrest and the conclusion of a trial; and conviction merely marks the beginning of a procedural ballet which can continue virtually indefinitely. In England today, the incidence of crime is small in comparison with ours, and respect for the law and for the legal apparatus remains undiminished.

A comprehensive study of the kind I recommend may suggest any number of improvements which we can make in our own procedures without sacrificing the substantial rights of the accused, and it may also be instructive in telling us what purely *local* developments in American life may have contributed to our current criminality. This study should cover not only such matters as the exclusionary rule, the right to counsel and the application of the privilege against self-incrimination, but also: (1) An examination of the ways in which criminal trials in the United States might be expedited. In some of our larger cities, delays of five to six months between arrest and trial are normal, and delays of up to two years are not at all uncommon. When trials do get underway, they are needlessly protracted. (As Chief Justice Burger noted last year, the actual trial of a criminal case now takes two to three times as long as it did a decade ago.) A comparative examination should certainly deal with the growing abuse in the United States of the jury selection process, which, as Edward Bennett Williams has pointed out, is fast becoming "the judicial counterpart to the legislative filibuster. . . ." But it should also consider the impact of pre-trial procedures which recent Supreme Court decisions have declared to be constitutionally mandated. As Chief Justice Stanley Fuld of the New York Court of Appeals recently remarked, "These new procedures have added tremendously to the caseload of the trial courts and have substantially lengthened the time which elapses between arrest and trial." (2) Excessive delays at the trial level are compounded, for many of the same reasons, by comparable delays on the appellate level. The problem is not only with direct attack on appeal, but with collateral attack by means of post-conviction remedies, such as the greatly expanded use of *Habeus Corpus*. (As New York District Attorney Frank Hogan has pointed out, "There is virtually no such thing as finality in a judgment of conviction.") I would propose, therefore, that we examine the reasons why want of finality has become such a burdensome problem only in the United States. Here, once again, it will be necessary to examine the role of the Supreme Court. The impact of rulings by the High Court is such that an appeal to the highest court of a state is now little more than a steppingstone to the federal court system. The scope of the problem can be measured by comparing the number of *Habeus Corpus* petitions entertained by the federal courts in the past with the caseload today. Twenty years ago the number of petitions filed was less than five hundred—a number that, incidentally, Mr. Justice Jackson then thought abusive. By 1960, the number had risen to nearly a thousand, and by the end of fiscal year 1971 the total was a staggering 12,145. (And the overwhelming majority of these petitions, needless to say, was made possible by the *Mapp* and *Miranda* rulings.) In 1970, there were as many *evidentiary hearings* on petitions for federal *Habeus Corpus* as there were total *applications* in 1953.

The latent assumption of this dramatic expansion of post-conviction remedies, of course, is that it is necessary to correct unjust or unconstitutional convictions. But a recent study by the National Association of Attorneys General revealed that at most, only 3% of such petitions were successful, which suggests that state courts are performing creditably and fairly and that most claims are both frivolous and dilatory in intention. As Mr. Justice Harlan wrote in Mackey v. United States, "No one, not criminal defendants, not the judicial system, not society as a whole, is benefited by a judgement providing that a man shall tentatively go to jail today, but tomorrow and everyday thereafter shall be subject to fresh litigation already resolved."

This last is no small point. The lack of finality not only imposes extraordinary administrative burdens upon the courts both state and federal; it not only robs judges and prosecutors of precious time that might be more usefully devoted to genuine problems of injustice; but it undermines the sense of legitimacy of the criminal law in the eyes of both and public and to accused. As Professor Paul Bator of Harvard has written: "A procedural system which permits an endless repetition of inquiry into facts and law in a vain search for ultimate certitude implies a lack of confidence about the possibilities of justice that cannot but war with the effectiveness of the underlying substantive commands. Furthermore, we should at least tentatively inquire whether an endless reopening of convictions, with its continuing underlying implication that perhaps the defendant can escape from corrective sanctions after all, can be consistent with the aim of rehabilitating offenders." The first step in rehabilitation, he adds, is a "realization by the convict that he is justly subject to sanction, that he stands in need of rehabilitation. . . ."

(3) I would propose also that we undertake comparative studies in the area of penal reform. The subject, of course, has been lately much in the news, and, as everyone from the Chief Justice to James Hoffa has pointed out, there is much that needs to be done. Here, as in dealing with the ultimate causes of crime, it must be confessed that many of the assumptions which have governed penology during the past century are now open to question. It is much easier to say what will *not* work rather than what will. And, based on recent experience, we can say that the laudable goals of deterrence and rehabilitation will not be advanced by making convictions more difficult to obtain, or by lessening the chances that a criminal, once convicted, will be effectively punished. As a recent report of the Americans Friends Service Committee pointed out—a report, incidentally, that was based in substantial part on the opinions of prisoners themselves—"After more than a century of persistent failure, the reformist prescription is bankrupt." Where we ought to go from here, it is difficult to say; but I suspect that we have a good deal to learn from foreign example.

(4) Last, but by no means least, I think it would be instructive to study the role of attorneys in criminal trials and to compare the way in which the adversary system affects the conduct and outcome of trials here and in Great Britain. A number of thoughtful observers in our country have expressed their deep concern that the adversary system is becoming an end in itself, that the ultimate goal of justice is being subordinated to political and theatrical gamesmanship. The courtroom in all too many cases has been turned into a kind of theatre of the absurd. Judges are insulted, decorum is scoffed at, and the judicial process held up to ridicule. That such behavior should take place at all is scandalous; but that it should be directed or condoned by members of the Bar is, to me absolutely intolerable. And I do not see that society is in any way obligated to confer a license to practice upon those whose behavior reveals a thoroughgoing contempt for everything that the law holds dear. Nor do I believe that it would be unjust for the courts or the Bar to remove the licenses of those who make a mockery of the very law whose protection they seek. We could, I believe, profit greatly by British example in this regard, and I commend such a project to the consideration of thoughtful men.

Well, you have been a remarkably patient audience, and I thank you for your indulgence. If I have taken overlong, as I fear I have, it is only because there is so much to say and so many things that need doing. Crime in this nation cannot continue to rise as it has in the recent past; public esteem for the legal process cannot continue to fall. Unless we come to terms with the problem of crime, I fear that almost everything else we attempt to do will come to nought. A free civil society cannot exist where there is widespread fear of criminal assault; it cannot exist where justice is so long delayed that it is, in effect denied; it cannot exist when the public believes that its legal system cannot protect the lives and liberties and property of the law-abiding. The danger in our time is less that the innocent will be punished than that the guilty will go free. And that, to my mind, is a far more serious injustice than any our system is likely to inflict upon one who may be wrongfully accused. The truth is that an innocent man has very little to fear from our criminal law; the difficulty and danger, if anything, is that the same might be said regarding the guilty man. And I believe that the public will not long tolerate a continuation of our present condition.

Which brings me to my final thought. In this day when disrespect for authority of all kinds—religious, parental, legal—is so pervasive; when allegiance to anything other than one's own passions is condemned as illegitimate; when "civil disobedience" is used as a defensive cloak for criminal behavior, let us not forget that, for all its failings, our nation and its rule of law are still robust and strong. But let us also bear in mind that, for all its strengths, the rule of law can only abide so many attacks and that the delicate webbing of civilization can, like the veil of the temple, be rent, and with it, the world's last best hope for freedom. Let us resolve, then, to seek justice; justice for the accused, but justice also for society. Let us resolve to

be fair; but also firm. Let us resolve to stand by the fairest system of law that the world has ever known. And in our resolve, let us call to mind the words of Abraham Lincoln, who said: "Let every American, every lover of liberty, every well-wisher to his posterity, swear by the blood of the revolution, never to violate in the least particular the laws of the country; and never to tolerate their violation by others. As the patriots of Seventy-Six did to the support of the Declaration of Independence, so to the support of the Constitution and laws, let every American pledge his life, his property, and his sacred honor; let every man remember that to violate the law is to trample on the blood of his father, and to tear the charter of his own and his children's liberty; let reverence for the laws be breathed by every American mother to the lisping babe that prattles on her lap—let it be taught in the schools, in seminaries, and in colleges; let it be written in primers, spelling books, and in almanacs; let it be preached from the pulpit, proclaimed in the legislative halls, and enforced in courts of justice. And, in short, let it become the *political religion* of the nation; and let the old and the young, the grave and the gay, of all sexes and tongues, and colors and conditions, sacrifice unceasingly upon its altars."

TREASURY MEMORANDUM SUPPORTS SWEEPING TAX REVISION

HON. JAMES ABOUREZK

OF SOUTH DAKOTA

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 1, 1972

Mr. ABOUREZK. Mr. Speaker, a document authored by the Assistant Secretary of the Treasury for Tax Policy, Mr. Edwin Cohen, recently attracted public attention in the debate over tax reform.

Today, I am inserting Mr. Cohen's memorandum, in full, into the RECORD. The administration will be asking for an increase in the Federal debt ceiling next week. At that same time, we will be provided an excellent opportunity to look at tax laws. Therefore, I feel that the impact of Mr. Cohen's memorandum is especially timely.

Mr. Cohen proposes a sweeping revision of the Federal tax code by eliminating the distinction between capital gains and ordinary income, and by ending all personal deductions that are unrelated to the making of taxable income.

He then proposes cutting the tax rates—a few percent for those on the lower end of the income scale, and a massive cut for those on the upper end.

I do not agree with all of Mr. Cohen's conclusions, but I am delighted to see that there is debate within the administration in favor of sweeping revision and simplification of the tax laws.

I think it is timely for all Members to read Mr. Cohen's remarks as this body moves toward consideration of tax legislation later this month.

Following Mr. Cohen's memorandum, I am inserting the comments of the tax reform group on the proposal:

POSSIBLE MAJOR CHANGES IN THE FEDERAL TAX LAWS—SIMPLIFICATION OF THE INCOME TAX ON INDIVIDUALS

There are constant complaints that the Federal income tax law is far too complicated. Each year during the filing season before April 15 there is a rising crescendo of denunciation of the tax forms, and of the increasing need for professional assistance in understanding and completing them. The Internal Revenue Service devotes much time and effort to the improvement of the forms and instructions. While some helpful changes might yet be made in the forms, the basic difficulty is that the governing statute is itself so complex that no revision of the form without a simplification of the statute will satisfy the complaints. Yet the political problems of simplifying an old law, now almost sixty years in existence, can scarcely be exaggerated.

Of course, numerous minor changes could be made in specific provisions of the Federal income tax law to achieve modest amounts of simplification for the more than seventy-five million indivduals now filing returns.

If, however, a major assault is to be mounted upon the existing complexities for individuals, I believe it must try to eliminate (1) the distinction between capital gain and ordinary income, and (2) the various personal deductions that are unrelated to the receipt of taxable income. The desirability of attempting a major degree of simplification may well be judged in relation to those two categories.

Capital Gains. Undoubtedly the single most important source of complexity in the law is found in the effort to impose a lower tax on capital gains, and to draw rules for determining the types of income that qualify as capital gains.[1] Not only is the distinction difficult in the statute, but it produces major efforts to plan business and investment transactions to qualify for the capital gains treatment. Substantial simplification could be achieved if the distinction between capital gains and ordinary income could be abolished.

The present capital gains tax system, which involves primarily treating one-half of long-term capital gains as ordinary income, in one sense represents a compromise between those who steadfastly maintain that capital gains should not be regarded as income and those who assert with equal tenacity that such gains should be treated the same as other income. But as a practical matter a chief aspect of the present system is that it limits the capital gains tax to 35% (25% on the first $50,000 of capital gains), whereas the rates on ordinary income go up to 70%. Thus abolition of the distinction between capital gains and ordinary income would require reduction of the maximum level of 35%; otherwise there would be a further increase in the tax on capital gains, producing a significant deterrent to investment and increasing the present tendencies to hold appreciated property until death, when its income tax cost changes to its then value.

Personal Deductions. A net income tax, especially one with graduated rates, requires allowance of deductions against gross income for expenses incurred in the production of income. But deductions for items unrelated to the receipt of income, such as charitable contributions, casualty losses, medical expenses, etc., are not necessary to the operation of the tax. Rather, they have been introduced into the law primarily as reflections of desires (a) to stimulate such expenditures, (b) improve the equity of the tax structure and (c) reduce the impact of high, steeply progressive rates. These personal deductions contribute in large measure to the complexity of the tax law and the forms, to the time needed to maintain individual records and to prepare and audit the returns, and to tax planning by individuals.

When the standard deduction was introduced in the law in 1944, about 82% of all taxpayers used it in lieu of itemizing their personal deductions. By 1968, however, only 58% were using the standard deduction. One of the major changes in the 1969 Tax Reform Act was to increase the standard deduction gradually over the period 1970–1973 from 10% of adjusted gross income with a ceiling of $1,000 to 15% with a ceiling of $2,000. This change is expected to result in close to 70% of individual returns using the standard deduction; but the remaining 30%, representing more than twenty-three million tax returns, can be expected to continue to itemize.[2] If the standard deduction were increased further, there would be a significant loss in revenue without solving the underlying problem of complexity.

Possible major simplification program. To eliminate the capital gain-ordinary income distinction and the personal deduction complexities, a program along the following lines might be considered:

1. *Rate reduction.* In lieu of the present structure that ranges from 14% to 70%, substitute rates running from 12% to 35%, as follows:

TAXABLE INCOME
($000 and Rate Percentage)

0–3	12
3–12	19
12–48	25
48 up	35

(The rates could readily be graduated in smaller steps.)

2. *Personal exemption increase.* In lieu of the present personal exemptions ($650 per person, rising to $700 in 1972 and $750 in 1973), the personal exemptions would be raised substantially to $1,600 for a single person, $3,200 for a married couple and $800 for each dependent. The blind and those over sixty-five would be allowed an additional $800 in lieu of the present double exemption.[3]

Under this proposal, for example, the normal family of four could earn at least $4,800 of income without paying tax, as contrasted with the $4,000 that will be permitted in 1973 under existing law.

3. *Capital gains.* Treated the same as ordinary income.

4. *Personal deductions.* Not allowed, except that interest deductions would be permitted to the extent of investment income received (since to that extent the interest should be regarded as an expense of deriving income).

Effect on revenue yield and distribution of income tax burden. If the 1973 level of personal exemptions and standard deductions were applied to 1971 estimates of individual income, the federal income tax revenue from individuals under existing law would be about $83.7 billion.

The proposed new income tax structure applied to 1971 individual income projections would produce an estimated revenue of $82.4 billion, a reduction of $1.3 billion, or about 1½%. We have not attempted as yet to refine the schedule of rates or personal exemptions, but it seems feasible to adjust them slightly to produce the same revenue as under the present structure.

It is important to consider the effect such a new system would have upon the distribution of the tax burden among the various income classes. The present distribution (under the 1973 law) and the change under the proposed system are set forth below:

Adjusted gross income	Present tax[1] (billions)	Tax change
Below 3	$1.4	(2)
3 to 5	2.3	−0.2
5 to 7	4.4	−.5
7 to 10	10.2	−.8
10 to 15	19.2	+.1
15 to 20	13.9	+.2
20 to 50	18.4	+.7
50 to 100	7.2	−.6
Over 100	7.7	−.1
Total	83.7	−1.3

[1] Assumes 1971 GNP of $1,065,000,000.
[2] Less than 0.1.

Footnotes at end of article.

Some refinements in the proposal would be needed to reduce the approximately 4% increase that would occur in the $20–50,000 income range and the approximately 9% decrease in the $50–100,000 range. A further refinement might be needed to adjust for the fact that the proposed system would reduce the income tax on families and increase the tax on single persons.

Objections. While the proposed new structure would achieve major simplification, and would open possibilities for elimination of other complex provisions mentioned later, a number of points would be strenuously urged in opposition to it. Among the major objections would be the following:

1. It would be argued that after the new structure was enacted, Congress or a subsequent Administration would move to increase revenue by increasing the rates, or at least would move to increase the top rate above 35%. The 35% top individual rate would be lower than that prevailing in most of the major nations of the world. A constitutional amendment limiting the maximum rate to 35% would be difficult to obtain, particularly because of possible needs to permit temporary increases in time of war or other unforeseen contingencies that would be difficult to define.

2. Although the distribution of the tax burden among the various income classes would remain substantially the same (or with minor adjustments could be made so), within each income class some individuals would find their tax increased and others would benefit from decreases. For example, those now having substantial deductions stemming from charitable deductions, home mortgage interest and real estate taxes, medical expenses,[4] casualty losses, etc., would have their tax increased in comparison with those in the same income class who do not make large expenditures of these types.

3. There would be substantial objections from among other sources—

a. Churches, colleges, hospitals, museums, community funds and other organizations that are major beneficiaries of deductible contributions.

b. The housing industry, because the elimination of mortgage interest and real estate tax deductions on personal residences would end the present income tax advantage of home ownership as contrasted with renting. The present preference for home ownership has often been attacked because real estate taxes and mortgage interest paid by landlords are passed on in the rent structure and are borne largely by tenants. Politically, suburbia may wish to keep the present system, with its preference for home ownership.

c. State governments, particularly New York and California, which have state income tax rates rising to 15% and 10%, respectively. The high progressive state rates in the upper brackets would be more burdensome of those taxpayers than under the proposed system. Yet taxpayers in states with average income taxes and sales taxes would have no real cause to object, since the federal income tax revenue and the aggregate personal income remaining after federal tax payments would remain the same.

Indeed, the reduction in rates might lead to objections from any groups that receive payments from persons who have tax incentives for making the payments, since the lower rates would reduce the tax advantages flowing from the expenditures.

4. Treating long-term capital gains as ordinary income may also produce objections from those now entitled to special capital gains treatment, such as owners of timber tracts, coal deposits and real estate, who would lose the preferences their industries now enjoy. Moreover, unless the new rates were designed to be exactly half of the present rates in all brackets (and the simplified schedule outlined above is not), there might be objection that the capital gains tax was being increased for some persons below the present topmost bracket.

5. Unless the top corporate rate of 48%[5] is also reduced, a top individual rate of 35% would cause complications that require thorough study, although they do not seem insurmountable. The change might cause a swing to sole proprietorship or partnership form of operation, as well as an increase in the number of "Subchapter S" corporations (which in essence are treated as partnerships). The Administration has already recommended to Congress that the permissible number of Subchapter S stockholders be increased from ten to thirty, and we have developed a program for simplifying the rules of the Internal Revenue Code governing those corporations.

6. It would be urged that while complexity would be substantially reduced under the simplified system, it would not be eliminated. If the income tax revenues were to be maintained at present levels, the tax would still be sufficiently high to warrant tax minimization planning. As an illustration, if charitable contributions were no longer deductible, persons rendering services might ask that all or part of their usual compensation be paid to their favorite charities—a type of tax avoidance that would be administratively difficult to combat. Yet while tax planning and tax avoidance would doubtless continue, they would be reduced in scope and importance under the proposed system.

7. It will be argued that members of Congress will disagree over the simplified rules to be installed in a new tax system and that inevitable compromises in the new legislation will themselves produce complexity. There is probably much truth in the contention, but if the goal of simplification is sufficiently appealing politically, simple compromises might be reached.

In broad summary, there are pitfalls and difficulties, but a simplified personal income tax would have great advantages that many would applaud. But it could be achieved only if (a) rates can be sufficiently reduced and (b) we are willing to reduce our use of the the income tax law to encourage or subsidize certain types of personal expenditures or misfortunes. Obviously there will be political opposition to the abandonment of those encouragements,[6] as well as to the lower rate structure, especially for the higher income brackets.

If the major changes regarding capital gains and personal deductions could be achieved in conjunction with rate reduction, there would be a great stimulus for proceeding with a series of other less significant moves that in the aggregate would substantially reduce the complexity of the law and the tax forms. Among these would be the elimination or restructuring of the provisions relating to sick pay, the retirement income credit, treatment of pension and annuities, the $100 dividend exclusion, child care expenses, exclusion of certain military pay and pensions, income averaging, etc. While the latter changes might be attempted individually, the chances of success would be much greater if simultaneously rates were being reduced and basic changes in the entire structure were being made.

Perhaps the chances of adoption of a simplified system might be enhanced if its effective date were deferred for several years to permit time for adjustment before it went into operation. Or perhaps some of the changes might be brought into effect gradually over a period of years.

It is possible to construct an alternative system in which taxpayers could be given the option to file on a simplified form or to use the present more complex form. Several years ago Senator Long introduced bills that would have provided such an alternative system. However, it would require duplicate provisions in the Code and duplicate forms; many taxpayers would have to calculate their taxes both ways to determine which method is the more favorable; and because of the taxpayer's option there would be a revenue loss for the government, necessitating some increase in rates to compensate for the loss.

FOOTNOTES

[1] In general, the Tax Reform Act of 1969 removed the 25% ceiling rate on capital gains except for the first $50,000 of such gains in any years. By 1972 the ceiling rate on capital gains beyond $50,000 will be 35% (*i.e.*, the maximum 70% regular rate applied to one-half of the capital gains), except that the new "minimum tax" on tax preferences in some cases can increase the effective rate on capital gains to 36½%.

[2] Under the 1969 Act the standard deduction in the years 1971–1973 will be as follows:

	Percentage	Ceiling
1971	13	$1,500
1972	14	2,000
1973	15	2,000

In addition, there will be a minimum standard deduction of $1,000 starting in 1972. If the 1973 standard deduction and personal exemption were applicable in calendar year 1971, the federal individual income tax base on an assumed GNP of $1,065 billion can be estimated as follows (in billions):

Adjusted gross income	$660
Personal deductions:	
Standard	47
Itemized	75
Total	122
Personal exemptions	134
Total	256
Taxable income	404
Tax	83.7

[3] If because the personal exemptions for taxpayer and spouse would be more than doubled, the present increased exemptions for the blind and the elderly could be eliminated, a further simplification could be achieved.

[4] In essence, under the simplified system, the present income tax stemming from deduction of uninsured medical expense above 3% of income would be reflected in lower tax rates for all. If health insurance against extraordinary medical expense were available for all, under whatever form of national health insurance might emerge, the present justification for an income tax deduction would be eliminated. But if some people will be unable to secure such insurance, they will want to continue the present partial "insurance" that stems from income tax deductions.

[5] The present corporate rate is 22% on the first $25,000 of income and 48% on the balance.

[6] It might be noted that the Ways and Means Committee and Finance Committee, which would have to approve the simplification, would lose jurisdiction over a number of important matters now dealt with in the tax laws.

Tax Reform Research Group Editorial: Simplification Is Not Enough

The release of the Cohen Plan is a major event in the national debate over our unfair and outmoded tax system. But an important negative feature weighs against the improvements Mr. Cohen proposes. While closing many loopholes—now used mainly by the rich—he would cut nominal tax rates in a way that would heavily favor high-income taxpayers. Tax rates on the rich would be cut in half, while rates in the lowest brackets would go down only a few percent. By combining this discriminatory rate-cut with the closing of loopholes, Mr. Cohen would continue the present distribution of the tax burden widely regarded as unfair. Clearly, tax

reformers will not be satisfied with this result.

We were surprised to learn that Mr. Cohen authored the tax simplification plan. While his experience and expertise are unquestioned, his public statements have not shown great concern for the unfairness of our tax system. Last year, for example, he was prominent in the Treasury attempt to exceed its authority and enact "ADR" depreciation regulations giving business a new multi-billion dollar tax cut. And he also staunchly opposed giving the public a meaningful chance to take part in the debate over these regulations. Mr. Cohen's recent letter to editors, and statements, in defense of the tax status quo have not altered this impression.

The year-long delay in White House action on the Cohen Plan is also cause for concern. The hints about tax simplification now beginning to surface have come only in response to mounting public pressure for tax reform. Indeed, the White House could easily use the Cohen simplification plan as a smokescreen, much in the way it may try to palm off a "Value-Added Tax" as "property tax relief." We sincerely hope that instead responsible legislators will use the plan as a first step towards fairer taxes.

RARICK REPORTS TO HIS PEOPLE ON WHERE THEIR MONEY GOES

HON. JOHN R. RARICK

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 1, 1972

Mr. RARICK. Mr. Speaker, I recently reported to my people on where their money goes. I insert the report in the RECORD at this point:

RARICK REPORTS TO HIS PEOPLE ON WHERE THEIR MONEY GOES

The tremendous cost to the U.S. government for devaluing the U.S. dollar 8.57% will be borne by the taxpayers. In addition to reducing the value of every dollar that is owned and henceforth will be put into circulation by 8½ cents, Congress has authorized the Secretary of the Treasury to borrow $1.6 billion to give to the international banking institutions to compensate for the loss of our collateral in their accounts when the dollar was devalued.

Certainly any responsible, thinking American would believe that the Congress would have learned by this tragic lesson and be more cautious in foreign aid and giving out money and credit to the international crowd. But, events following the devaluation fiasco would indicate that Congress has not gotten the message. Possibly the belief is that U.S. dollars are going out of style so we should hurry and spend them before they become obsolete.

I thought today I would report to you on a few aspects of how your tax dollars are continuing to be spent in such a manner that the effect will not only necessitate additional tax increases and a larger national debt, but will eventually cause further devaluation in the buying power of the U.S. dollar.

The first bill considered was the Authorization for Fiscal Year 1973 for the Department of State and USIA. This bill authorized $648 million for the Department of State which includes $289 million under the heading "Administration of Foreign Affairs" to provide U.S. representation in foreign countries through 126 embassies, 72 consulates general and 2 embassy branch offices employing 3,792 Americans overseas and 5,120 foreigners.

The bill also authorized $188 million to meet our assessment of 31.52% of the United Nations budget and the U.S. share of the other international organizations.

Also included in the bill was a special sum of $85 million to permit the U.S. Secretary of State to furnish financial assistance for the resettlement of Soviet Jewish refugees in Israel. The funds authorized were to be used for housing, clothes, food, medical care, education and training for the resettlement in Israel of Jewish refugees from the Soviet Union.

The following day the House considered H.R. 14989 which was the appropriations bill to make available the money authorized the previous day as well as additional appropriations for the Departments of Justice and Commerce, the Judiciary and related agencies and for other purposes. The "other purposes" identifies the bill as being a genuine Christmas tree package—a little money gift for every agency and with a few choice bones left over to encourage all doubters that this was such a good bill that no one would dare oppose it.

The total amount of dollars authorized was not even given in the bill or in the report which accompanied the bill, perhaps because the printing equipment was not capable of totaling such astronomical figures. The debate before the final vote suggested that the appropriation of only $151 million as against the $188 million requested represented a severe cut in the U.N. contribution from 31% to 25%. The budget cut was opposed by the Administration and many of the Democratic one-worlders who not only feel we should not cut our lopsided gift to the U.N., but should even give it more money.

Proposed amendments to restore the full U.S. funding were narrowly defeated. The informed American simply does not buy the U.N. ploy. Especially is this so when he is paying the salary of almost 9,000 State Department people in foreign countries and when the President of the United States acknowledges that the U.N. is such an inept organization he is forced to personally apply his diplomacy in summit meetings in Peking and now Moscow. The informed American understands that the United States, with approximately 5½% of the world's population and with only one vote in the 131 member U.N. organization, is not being treated fairly in being required to supply one fourth of the cost of the operations of the U.N., whose only successful activity has been the erosion and eventual destruction of every American institution as well as our constitutional form of government.

Nor will the informed American swallow the argument that our share should be greater because we are wealthier people. Too many wealthy people and accumulations of wealth have found ways to dodge their fair share of the cost of running our own country through tax loopholes. Why should he be asked to apply one rule to our people and a separate standard to international organizations?

The size of member nations in number of people varies from 110,000 in population for the Maldive Islands to 750 million for Red China. Yet each has one vote and pays different dues—in fact, some pay none. The U.N. is a classic example of illegal apportionment. It could never stand the "one-man-one-vote" test of any of our Federal judges.

The gift list for International Organizations and Movements from the report accompanying the bill is worth noting in its entirety.

UNITED NATIONS AND SPECIALIZED AGENCIES

United Nations	$46,881,014
United Nations Education, Scientific and Cultural Organization	10,067,101
International Civil Aviation Organization	4,163,000
World Health Organization	20,857,370
Food and Agriculture Organization	9,098,820
International Labor Organization	4,000,000
International Telecommunication Union	966,797
World Meteorological Organization	943,489
Intergovernmental Maritime Consultative Organization	$151,538
International Atomic Energy Agency	3,849,190
Subtotal	100,978,319

INTER-AMERICAN ORGANIZATIONS

Subtotal	35,505,592

REGIONAL ORGANIZATIONS

Subtotal	13,606,767

OTHER INTERNATIONAL ORGANIZATIONS

Subtotal	996,572
Total	151,087,250

Interestingly enough, under the United Nations, $4 million was given to the International Labor Organization, the ILO. For several years Congress had refused to pay the so-called U.S. assessment to this organization because George Meany, the President of the AFL–CIO, had reportedly called it a Red propaganda agency. This year the Congress not only paid the $4 million current assessment, but in the second supplementary assessment, coughed up another $7,692,000,000 to pay all of the back dues, although there had never been any U.S. representation during the delinquent years. The change of heart was urged as necessary to permit U.S. attendance to prohibit the Russians from dominating the world labor movement.

Additionally, $4,942,000 was appropriated for the expenses of sending U.S. representatives or missions to the U.N. and its international organizations and another $5 million to pay the expenses of U.S. Congressional groups attending the U.N. functions as delegates.

In other earlier legislation a direct appropriation was made to UNICEF, the U.N. International Childrens Education Fund. Apparently, the feeling was that crime has now become so rampant that the U.N. crowd didn't want their children out on Halloween night begging for donations so it was decided to make the American taxpayers give to this cause whether they wanted to or not.

The American people will be repeatedly told of the great work of the U.N. and service to humanity, but no one ever goes to the trouble of telling them just what it is that the U.N. has actually accomplished.

$155 million of your money is being given to this international communist debating society. What is $155 million? The 1970 Census report on social and economic characteristics in Louisiana reports that in the parishes which make up the present Sixth District, there are 10,859 families who receive public assistance or public welfare income. The total mean annual income of these families, including public assistance or welfare and other income, varies from $3200 a year in East Baton Rouge Parish to $2400 a year in Livingston Parish. The $155 million being given to the United Nations for 1973, if equally divided among the poor families of the Sixth District would be sufficient to give each family $14,352. To put it otherwise, it is estimated that there are approximately 87,000 families in our State of Louisiana who are receiving welfare assistance. The money the taxpayers have been forced to give to the U.N. in the coming year would be $1,616 for every needy family in Louisiana. Consider that according to the 1970 census there are 41,900 in our state with incomes of less than $1,000.

The giveaways to the international organizations last week which will end up being takeaways from your income taxes next year are almost routine. If these figures weren't bad enough, as I am preparing this report, this week Congress has already authorized $19.7 billion for Housing and Urban Development, Space, Science and Veterans and $8.3 billion for the Department of Transportation.

This is where your money goes. Far too often it is money that the government doesn't have. This over-spending can only end up in additional taxes, an increase in the national debt, or more likely both.